

No. 82-1295

**AUG 8 1983**

**IN THE**  
**Supreme Court of the United States**  
**OCTOBER TERM, 1982**

ALEXANDER L. STEVENS,  
CLERK

ESCAMBIA COUNTY, FLORIDA, *et al.*,  
*Appellants,*

*v.*

HENRY T. McMILLAN, *et al.*,  
*Appellees.*

**ON APPEAL FROM THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

**JOINT APPENDIX**  
**VOL. I — Pages 1-324**

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**Appeal Docketed February 2, 1983**  
**Probable Jurisdiction Noted April 18, 1983**

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(v)

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**DOCKET SHEETS**  
District Court

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

HENRY T. McMILLAN, ROBERT CRANE,  
CHARLES L. SCOTT, WILLIAM F.  
MAXWELL and CLIFFORD STOKES,

Plaintiffs,

vs.

Civil Action  
No. 77-0432

ESCAMBIA COUNTY, FLORIDA; GERALD  
WOOLARD, KENNETH KELSON, ZEARL  
LANCASTER, JOHN E. FRENKEL, JR.,  
MARVIN BECK, individually and in their  
official capacities as members of the BOARD  
OF COUNTY COMMISSIONERS OF  
ESCAMBIA COUNTY; SCHOOL DISTRICT OF  
ESCAMBIA COUNTY: THE SCHOOL  
BOARD OF ESCAMBIA COUNTY: PETER  
R. GIND, CAROL MARSHALL, RICHARD  
LEEPER, LOIS SUAREZ, A.P. BELL, FRANK  
BIASCO and JAMES BAILEY, individually  
and in their capacities as members of the  
ESCAMBIA COUNTY SCHOOL BOARD:  
JOE OLDMIXON, individually and in his  
official capacity as SUPERVISOR OF  
ELECTIONS OF ESCAMBIA COUNTY

Defendants

FILED  
Mar 18  
OFFICE OF CLERK  
U.S. DISTRICT CT.  
NORTH DIST. FLA.  
PENSACOLA, FLA.

**CAUSE** Suit in equity arising out of Constitution &  
action for declaratory judgment under 28 USC  
2201 & 2202

UNITED STATES DISTRICT COURT DOCKET  
DC-III (REV. 1/75)

DATE	NR	PROCEEDINGS
3/18/77	1	Filed: 0+30 complaints (civil rights) alleging violation of election laws of Escambia County, Florida & seeking declaratory judgment of enjoinder from holding, supervising or certifying results of elections for School Board & County Commissioners & award of attys fees and costs
3/18/77		Issued: 0+31 summons and del. same to US Marshal w/30 copies of complaint & USM/285 service forms on 3/21/77
3/18/77		Filed: Cert. of Good Standing from S/D ALA for James U. Blacksher
3/18/77		Cert. of Good Standing from S/D ALA for Larry T. Menefee
3/21/77		Mailed Rule 6 letter to all counsel for Plfs./Rule 3 letter to NY attys JS-5 prepared
3/28/77	2	Filed: Summons & USM/285 showing service on Escambia County, Florida by serving Cindy Majewski, authorized agent for Kenneth Kelson, Chairman of Board of County Commissioners on 3/25/77
3/28/77	3	Filed: USM/285 showing service on Board of County Commissioners of Escambia County by serving Cindy Majewski, authorized agent for Kenneth Kelson, Chairman of Board on 3/25/77

- 3/28/77 4 Filed: USM/285 showing service on Kenneth Kelson, individually, by serving Cindy Majewski, authorized agent for service on Kenneth Kelson, on 3/25/77
- 3/28/77 5 Filed: USM/285 showing service on Kenneth Kelson, Board of County Commissioners of Escambia County, by serving Cindy Majewski, authorized agent for Kenneth Kelson, on 3/25/77
- 3/28/77 6 Filed: USM/285 showing service on Marvin Beck, individually, by serving Cindy Majewski authorized agent for service on Marvin Beck, on 3/25/77
- 3/28/77 7 Filed: USM/285 showing service on Marvin Beck, Board of County Commissioners of Escambia County, by serving Cindy Majewski, authorized agent for service on Marvin Beck, on 3/25/77
- 3/28/77 8 Filed: USM/285 showing personal service on Joe Oldmixon, individually, on 3/25/77
- 3/28/77 9 Filed: USM/285 showing personal service on Joe Oldmixon, Supervisor of Elections for Escambia County, on 3/25/77
- 4/11/77 10 Filed: Motion & Stipulation for Extension of Time for defts to file responsive pleadings
- 4/11/77 11 Filed: Order of Judge Arnow giving defts to 4/27/77 to file responsive pleadings-copies to all counsel
- 4/11/77 12 Filed: 285 service form w/summons attached showing service on Charles Dease, Bd. of Co. Comm. by serving sec. Linda Scheuerman on 4/4/77

- 4/11/77 13 Filed: 285 service form w/summons attached showing service executed on Charles Dease individually by his secretary Linda Scheuermann on 4/4/77
- 4/11/77 14 Filed: 285 service form showing service on Zearl Lancaster, Bd. of Co. Comm. by executing on his secretary Carol Starr on 4/4/77
- 4/11/77 15 Filed: 285 service form showing service on Zearl Lancaster, individually by serving his secretary Carol Starr on 4/4/77
- 4/11/77 16 Filed: 285 service form showing service on Jack Kenney personally on 4/1/77 in capacity as Co. Comm.
- 4/11/77 17 Filed: 285 service form showing personal service on Jack Kenney, individually on 4/1
- 4/11/77 18 Filed: 285 service form showing personal service on Lois Suarez as member of School board on 3/31/77
- 4/11/77 19 Filed: 285 service form showing personal service on Lois Suarez, individually on 3/31/77
- 4/11/77 20 Filed: 285 service form showing personal service on Peter Gindl, individually on 3/3
- 4/11/77 21 Filed: 285 service form showing personal service on Peter Gindl, member of school board on 3/31/77
- 4/11/77 22 Filed: 285 service form showing personal service on Carol Marshall on 3/31/77
- 4/11/77 23 Filed: 285 service form showing personal service on Carol Marshall, member of school board on 3/31/77



- 4/11/77 24 Filed: 285 service form showing personal service on Charles Stokes, Supt. of Schools for School Board of Escambia County on 3/31/77
- 4/11/77 25 Filed: 285 service form showing service on Dr. Floyd Dumas, Asst. Chairman of Board, for School District of Escambia County on 3/31/77
- 4/11/77 26 285 service form showing personal service on A.P. Bell, member of School Bd. on 3/31/77
- 4/11/77 27 Filed: 285 service form showing personal service on A.P. Bell, individually on 3/31/77
- 4/11/77 28 Filed: 285 service form showing personal service on James Bailey, member of School Board on 3/31/77
- 4/11/77 29 Filed: 285 service form showing personal service on James Bailey, individually on 3/31/77
- 4/11/77 30 Filed: 285 service form showing service on Richard Leeper, member of School Bd. on 3/31/77
- 4/11/77 31 Filed: 285 service form showing service on Richard Leeper individually on 3/31/77
- 4/11/77 32 Filed: 285 service form showing service on Frank Biasco individually on 3/31/77
- 4/11/77 33 Filed: 285 service form showing service on Frank Biasco, member of School Board on 3/31/77
- 4/27/77 34 Filed: Answer & Affirmative Defenses of Defendant School Board, et al — Referred to Judge Arnow

- 4/27/77 35 Filed Answer & Affirmative Defenses of Escambia County, et al — Referred to Judge Arnow — PPT Requested
- 4/28/77 36 Filed: Notice of PPT set for 5/18/77 at 10:30 AM-copies to all counsel
- 5/18/77 37 Filed: Plaintiffs' 1st interogs. to deft School Bd. chk
- 5/18/77 38 Filed Plaintiffs' 1st request for prod. of documents by deft Oldmixon. chk
- 5/18/77 39 Filed: Plaintiffs' 1st interogs. to deft Oldmixon. chk
- 5/18/77 L.C. Notes of Hearings held from 10/30 - 11/30 — Order to be entered — Discovery set for 8/18/77. Cases 77-0432 and 77-0433 are consolidated for discovery purposes. Conditionally certified as class action. Briefs due in 10 days on disputed areas.
- 5/18/77 40 Filed First Interrogatories propounded by Deft School Board, et al
- 5/18/77 41 Filed: Order that cases consolidated for disc. only w/disc to end 8/18/77; that original of all depos filed on this case w/copy filed in 77-0433; conditionally certified class action w/members of class being all black citizens of Escambia County & City of Pensacola; memos due 5/30 on issue if State, Governor & Dept. of State are indispensable parties; whether case should proceed against members of County Comm. School Board & City Council in individual capacities — copies to all counsel of record
- 5/18/77 Supplemental class action allegation prepared

- 5/20/77 42 Filed: Defts' Escambia Co., County Comm. & individual members of same, Elect. supervisor & as individuals 1st interros to plfs.
- 5/20/77 43 Filed: Plfs' 1st request for production of documents by School Bd. & individual members thereof
- 5/27/77 44 Filed: Plfs' memo brief concerning questions raised at 1st pt conference — REFERRED
- 5/27/77 45 Filed: Defts' Memo of law in support of county commissioners & supervisor of election affirmative defenses — REFERRED
- 5/31/77 46 Filed: Deft. School Board's memo in support of affirmative defenses — REFERRED
- 6/3/77 47 Filed: Plfs' 1st request for production by County Commissioners
- 6/3/77 48 Filed: Plfs' 1st interros to County Commissioners
- 6/17/77 49 Filed Deft Oldmixon's reply to Plfs' 1st request for Production of Docs.
- 6/20/77 50 Filed: Deft. School Board's ans & obj. to plfs' 1st interros & memo in support of same
- 6/21/77 51 Filed: Deft Oldmixon's \*Answers, Objections & Memo to Plfs' 1st Interros to Deft.
- 6/21/77 52 Filed: Response of Deft School Board, et al to Plfs' 1st Request for Production & Brief in support of objections to production

- 6/24/77 53 Filed: Plfs' 1st Interrogs to Deft City of Pensacola
- 6/24/77 54 Filed: Plfs' 1st Request for Production of Documents by Deft. City of Pensacola
- 6/28/77 Received: Proposed Consent Discovery Order — REFERRED TO JUDGE ARNOW
- 7/1/77 55 Filed: Answers & Objections of Plfs to Defts' first interrogatories
- 7/8/77 56 Filed: Defendant County Commissioners' response to plfs' 1st request for prod.
- 7/15/77 57 Filed: Deft's notice of taking depositions of Henry McMillan, Robert Crane, Charles Scott, Wm. Maxwell, Charles Stokes, Elmer Jenkins, Woodrow Cushon, Samuel Horton, Henry Burrell & Bradley Seabrook on 7/20/77 & 7/21/77
- 7/20/77 58 Filed: Consent Discovery Order (Arnow, CDJ) that deft Oldmixon may answer plfs' 1st Interrogs. to deft. Oldmixon when necessary by referring to documents & said documents need not be filed in Clerk's office-copies to all counsel
- 7/22/77 59 Filed: Second interrogatories propounded by Deft School Board, et al
- 7/26/77 60 Filed: Plfs; notice of taking Joseph Mooney's depo on 8/3/77 @ 9/30 AM
- 7/28/77 61 Filed: 2nd Interrogatories propounded by Defts County & Supvsr of Elections

- 8/2/77 62 Filed: Joint motion to extend discovery w/proposed order — REFERRED to Judge Arnow
- 8/4/77 63 Filed: Copy of letter from Atty. Blacksher to John Fleming that depo of Mr. Moone has been re-set for 8/10/77 @ 9:30 AM
- 8/4/77 64 Filed: Order granting motion for exten. of disc. — time extended to 11/19/77 & same not to be further extended unless motion file suff. in advance of 11/19/77
- 8/5/77 65 Filed: Copy of letter to all counsel from judge re: adding add. parties
- 8/9/77 66 Filed: ORDER (ARNOW, CJ) The new local rule 17, entitled Class Actions, adopted by this court, is now adopted as a rule applying to this case during the period from the date of this order until 11/1/77 when such local rule becomes effective & thereafter covers the conduct of this & all other class action suits — Copies to all counsel
- 8/24/77 67 Filed: Deposition of Woodrow Cushon taken on 7/21/77
- 8/24/77 68 Filed: Deposition of Hollice T. Williams taken on 8/2/77
- 8/29/77 69 Filed: Deposition of Samuel A. Horton taken on 7/27/77
- 8/29/77 70 Filed: Deposition of Henry N. Burrell taken on 7/27/77
- 8/27/77 71 Filed Deposition of Charles L. Scott taken on 7/27/77
- 9/7/77 72 Filed: Depo of Robert P. Crane taken 7/25/77

- 9/9/77     73     Filed: Deft County Commissioners' Answers, objections & memo to plfs' first interrogatories to deft county commissioners
- 9/9/77     74     Filed: Depo of William F. Maxwell taken 7/25/77
- 9/12/77    75     Filed: Deft County Commissioners' Answers, objections & memo to plfs' first interrogatories w/Commissioner Lancaster's signature
- 9/19/77    76     Filed: Depo of Henry McMillan
- 9/19/77    77     Filed: Depo of Bradley M. Seabrook
- 9/22/77    78     Filed: Deposition of Clifford Stokes
- 9/29/77    79     Filed: Deposition of Joseph K. Mooney
- 10/5/77    81     Filed: Deposition of Frank A. Faison
- 10/5/77    81     Filed: Notice of Deposition of Peter R. Gindl on 10/25/77
- 10/5/77    82     Filed: Notice of Deposition of Kenneth Kelson on 10/24/77
- 10/12/77   83     Filed: Plfs' answer and obj. to deft. School Board's 2nd interros
- 10/12/77   84     Filed: Plfs' ans. & obj. to deft. County Commissioner's and Super. of Elections' 2nd interros
- 10/12/77   85     Filed: Depo of Elmer Jenkins taken 7/21/77
- 10/19/77   86     Filed: Notice of filing verbatim transcript of statements made by & to Deft Board of County Commissioners & atty during public hearing held 8/31/77
- 11/10/77   87     Filed: Deposition of Henry T. McMillan & Robert Paul Crane taken on 7/20/77

- 11/18/77 88 Filed: Deft, Escambia County — Motion to extend time for discovery — REFERRED as EMERGENCY
- 12/1/77 89 Filed: Notice of Continuation of taking of deposition of Henry T. McMillan.
- 12/2/77 90 Filed: Clerk's Notice — Deft Escambia County Motion to extend discovery — GRANTED copies to all counsel — Discovery ext. to 1/6/78
- 12/12/77 91 Filed: Continuation of deposition of Henry McMillan on 12/6/77
- 12/15/77 92 Filed: Transcript of a portion of meeting of Bd of Co. Commissioners held 12/8/77.
- 12/19/77 93 Filed: Transcript of School Board meeting of 10/13/77
- 1/10/78 94 Filed: Plfs' Motion & brief for order authorizing certain communications with class members —& Hearing set, handed to L.C.
- 1/10/78 95 Filed: ORDER extending discovery to 3/10/78 — Copies to all counsel
- 1/16/78 96 Filed: Ltr from Atty Charles S. Rhyne re: change of address
- 1/20/78 97 Filed: Deft. County Comm. response to motion for order authorizing communications w/class members
- 1/23/78 98 Filed: Defts; School District, School Board, Gindl, Marshall, Leeper, Suarez, Bell, Biasco & Bailey's reply memo in op-po to motion for order authorizing communications with class

- 1/25/78 99 Filed: Defts County Commissioners' supplemental answer to plf's interrogs
- 1/30/78 100 Filed: Ltr from Louis F. Ray, Jr. to Judge Arnaw re: School Board Transcript
- 2/1/78 101 Filed: Deft. County's notice of taking depos of Drs. Cottrell, Curry, McGovern and Shofner on 2/27 & 28 w/copy of letter to Atty Blacksher attached
- 2/8/78 102 Filed: Notice of hearing on motion & other matters pertaining to communications of class members set 2/22/78 at 3:00 PM — copies to all counsel
- 2/14/78 103 Filed: Plfs' motion and memo for order authorizing Dr. Chas Cotrell to interview members of class
- 2/14/78 104 Filed: County's respns to plfs' informal disc. request for 1977 EEO-4 reports
- 2/23/78 105 Filed: ORDER (ARNOW, CJ) Deft, Dr. Frank Biasco w/i 15 days (3/10/78) will serve memo of law respecting motion & plfs have 15 days after service to serve response — copies to all counsel
- 2/23/78 106 Filed: ORDER (ARNOW, CJ) re communications w/class members; counsel shall maintain a list of all class members they communicate with & shall periodically file in this court such lists, under seal, to be held *in camera*, w/such lists to be filed at the end of each month, commencing w/3/78. Names on such list will not be divulged except pursuant to order of competent court — copies to all counsel



- 2/23/78 107 Filed: Clerk's Notice — Plfs' Motion for order authorizing Dr. Cotrell to conduct interviews w/members of class — DENIED as moot, in view of order entered this date — copies to all counsel
- 2/23/78 108 Filed: Deft County Commissioners' supplemental answers to plfs' interrogs
- 2/23/78 109 Filed: Ltr from Atty Ray to Judge Arn-  
now dtd 1/31/78 re: Dr. Biasco
- 3/1/78 110 Filed: Plfs' Motion for extension of time  
for conducting discovery — REFER-  
RED
- 3/6/78 111 Filed: Letter to Judge from Atty.  
Blacksher w/proposed form letter seek-  
ing funds from class members attached  
for approval by court — REFERRED
- 3/7/78 112 Filed: Memo of law in support of pet. of  
deft Dr. Biaso for approval of proposed  
public statement
- 3/10/78 113 Filed: Clerk's Notice — Proposed form  
letter from plfs approved w/correction  
— copies to all counsel w/copy of ap-  
proved letter attached
- 3/13/78 114 Filed: Clerk's Notice — Motion to ext.  
disc. GRANTED — Disc. ends 3/20/78  
— copies to all counsel
- 3/13/78 Rule 3C letter to all counsel
- 3/21/78 115 Filed: Order setting PT Conf — set  
4/21/78 @ 9 AM w/papers due 4/14 —  
copies to all counsel of record
- 3/24/78 116 Filed: Order modifying paragraph (B) of  
order setting PT Conf so that parties  
meet by 4/10 rather than by 4/3 —  
copies to counsel of record

- 3/30/78    117    Filed: ORDER approving Dr. Biasco statement permissible under Local Rule 17(B) copies to all counsel
- 4/3/78    118    Filed: List of class members contacted by plfs' counsel – FILED SEALED AS PER ORDER OF COURT
- 4/1/78    119    Filed: Defts' MSJ & memo in support of same
- 4/12/78    120    Filed: Amended PT Order – PT set 5/31/78; PT Papers due 5/15/78; trial tent. set 7/5-7/78 & 7/17-21/78 – copies to all counsel
- 4/13/78    121    Filed: 2nd amend. order for PT – set 5/4/78 @ 10 AM w/papers due 4/26 & trial set 5/15/78 – copies all counsel
- 4/25/77    122    Filed: Notice of appearance of add. counsel for plfs – Rule 5 letter written
- 4/25/77    123    Filed: County's motion for ext. to file PT papers from 4/26 to 5/1 – REFERRED
- 4/25/77    124    Filed: County's memo in support of motion to extend time to file PT papers
- 4/25/77    125    Filed: Deposition of Kenneth Shofner taken on 3/2/78
- 4/25/77    126    Filed: Deposition of James McGovern taken on 3/2/78
- 4/26/78    127    Filed: PT Stipulation
- 4/27/78    128    Filed: Cy ltr from Judge Arnow to Counsel re: compliance W/PT Order
- 5/1/78    129    Filed: Plfs motion to allow deposing of defts' expert witnesses – REFERRED

- 5/1/78      130    Filed: Plfs' notice of taking depositions of Dr. Dauer, Dr. Morris, Dr. Horton 5/8/78
- 5/1/78      131    Filed Plfs' PT proposed findings of fact & conclusion of law — REFERRED
- 5/1/78      132    Filed: Plfs' PT brief & opposition to depositions' MSJs — REFERRED
- 5/1/78      133    Filed: Deft' Trial Brief — REFERRED
- 5/1/78      134    Filed: Deft School Board 2nd amendment to deft's potential witness list
- 5/1/78      135    Filed: Deft School Board 1st amendment to potential witness list
- 5/1/78      136    Filed: Deft County Commissioners & Supervisor of Elections exhibit list
- 5/1/78      137    Filed: Defts' Proposed findings of facts & conclusions of law — REFERRED
- 5/4/78      138    Filed: Cert. of Good Standing from ND/Ala for W.E. Still, Jr.
- 5/8/78      139    Filed: Notes of PT Conf; plfs prior to trial to file stip re: para. F5 of the PT stip; memo re: obj. to exhibits due by 5/12 & PT order due 5/12
- 5/8/78      140    Filed: Copy of letter from Judge to all counsel re: conduct of trial.
- 5/8/78      141    Filed: Third Amendment to Deft School Bd's potential witness list.
- 5/11/78     142    Filed: First Amendment to Deft County Commissioners and Supervisor of Elections' potential witness list.
- 5/12/78     143    Filed: Deft memo in opposition to admissibility of newspaper articles — REFERRED

- 5/12/78    144    Filed: Amendment to Plfs' Witness List  
                    - REFERRED by handing to L.C.
- 5/12/78    145    Filed: File Memo of authorities concern-  
                    ing admission of newspaper articles -  
                    REFERRED by handing to L.C.
- 5/12/78    146    Filed: PRE-TRIAL ORDER - copies to  
                    all counsel
- 5/12/78    147    Filed: Deft Cty Cmms & Svsnr Elect.  
                    Memo in opp. to admissibility of ex-  
                    hibits of Plfs - REFERRED to handing  
                    to L.C.
- 5/12/78    148    Filed: Stipulation pursuant to PT Order  
                    filed 5/12/78 - REFERRED by hand-  
                    ing to L.C.
- 5/15/78    149    Filed: Deposition of Doctor Manning  
                    Dauer taken 5/8/78
- 5/15/78    150    Filed: Deposition of Doctor Michael  
                    Horton taken 5/8/78
- 5/15/78    151    Filed: Deposition of Honorable M.C.  
                    Blanchard taken 5/8/78
- 5/17/78    152    Filed: Deposition of Peter R. Gindl, Sr.  
                    taken 8/2/77
- 5/18/78    153    Filed: Deposition of Dr. Charles Cottrell
- 5/23/78    154    Filed: Memo of law of deft. School  
                    Board
- 5/15/78            Proceeding before Judge Arnoff for  
                    non-jury trial - to continue 5/16
- 5/16/78            Cont. of N-J trial - to cont.
- 5/17/78            Cont. of N-J trial - to cont.
- 5/18/78            Cont. of N-J trial - to cont.

5/21/78		Cont. of N-J trial — to cont.
5/22/78		Cont. of N-J trial — to cont.
5/23/78		Cont. of N-J trial — to cont.
5/24/78		Cont. of N-J trial — to cont.
5/25/78		Cont. of N-J trial — to cont — both sides rest @ 11:40 AM — parties to file briefs in 10 days — 5/5/78
5/30/78	155	Filed: Transcript of trial testimony of Dr. Charles L. Cotrell
6/1/78	156	Filed: Transcript of trial testimony of Dr. Manning J. Dauer
6/5/78	157	Filed: Trial Testimony of William H. Marshall
6/5/78	158	Filed: Defts County & School Board's post trial memo w/copy of same — REFERRED
6/6/78	159	Filed: Plfs' post-trial proposed findings of fact & conclusions of law — REFER- RED
6/6/78	160	Filed: Copy ltr from Atty Blacksher to defts counsel re: Plfs' Post trial brief
6/12/78	161	Filed: Defts' motion to file post-trial memo response to plfs' post-trial brief w/memo in support attached — REFERRED
7/3/78	162	Filed: Sealed envelope containing those class members with whom attorneys for the plaintiffs in this cause and in 77-0433 discussed these cases during the period through 6/30/78.

- 7/7/78 163 Filed: Plfs' sealed list of class members as per order
- 7/7/78 164 Filed: Defts' application for stay and injunction pending appeal
- 7/7/78 165 Filed: Defts' memo in support of application for stay & injunction & proposed order — REFERRED
- 7/10/78 166 Filed: School Board's consent to entry of order granting application for stay and injunction pend. appeal
- 7/10/78 167 Filed: Memorandum decision — copies del. & mailed to all counsel of record
- 7/10/78 168 Filed: Judgment in favor of plfs and against defts & taxing costs against defts; that parties to submit proposals for dilution remedy in 45 days; that remedial systems approved and adopted not to be effective for primary & general elections in 1978 but will be effective in 1980; retaining jurisdiction of matter & that an immediate appeal may materially advance ultimate decision of litigation — copies either del. or mailed to all counsel; recorded in COB #21, Pgs 14 & 15
- 7/10/78 JS-6 prepared
- 7/11/78 169 Filed: Order that defts' application for stay of elections pend. final determination DENIED — copies to all counsel & recorded in COB #21, Pgs. 17-19
- 7/11/78 170 Filed: Order that County Commissioners motion to substitute #34 exhibit with copy of same — GRANTED — copies to all counsel

- 7/14/78    171    Filed: Cy ltr to John Suda re: transcript of case
- 7/18/78    172    Filed: Plfs' motion to alter or amend judgment
- 7/18/78    173    Filed: Brief in support of plfs' motion to alter or amend judgment
- 7/31/78    174    Filed: Opposition to plaintiff's motion to alter or amend judgment. Referred.
- 8/8/78    175    Filed: ORDER — Plfs motion to amend or alter judgment is denied w/o prejudice — copies to all counsel
- 8/9/78    176    Filed: Notice of Appeal by Deft Carol Ann Marshall
- 8/9/78    177    Filed: Notice of Appeal by Defts Escambia County, et al.
- 8/24/78    178    Filed: County's proposed election plan
- 8/24/78    178    Filed: School Board's proposed election plan
- 8/24/78    179    Filed: County's amendment to election plan
- 8/24/78    180    Filed: School Board's proposed election plan
- 8/25/78    181    Filed: Plaintiffs' submission of districting plan for the County Commission and School Board. Referred.
- 8/28/78    182    Filed: Cy ltr from Atty Fleming to Counsel re: transcript
- 8/29/78    183    Filed: Cy ltr from Judge Arnow to All Counsel re: Hearing (status) 9/25/78 at 9:00 AM w/ltr from Grady H. Albritton dtd 8/29/78

- 9/7/78 184 Filed: Plfs' amendment of districting plan for the county commission & school board — REFERRED
- 9/13/78 185 Filed: Request for extension of time for transmission of record on appeal — REFERRED
- 9/14/78 Request for ext. of time for trans. of record-on-appeal stamped GRANTED — copies to all counsel, court reporter & cert copy to USCA-5th Cir.
- 9/15/78 186 Filed: Defts' memo in support of submitted electoral plans — REFERRED
- 9/19/78 187 Filed: Plfs' memo concerning proposed remedies — REFERRED
- 9/22/78 188 Filed: Notice of adoption of ordinance amending election plan. Referred.
- 10/5/78 189 Filed: Memorandum (WEA) w/trans. ltr to all counsel — memos due re: charter commission & School Board Governing Authority w/plfs responding w/i one wk after (10/10/78) — hearing set 11/21/78 at 2:00 PM (evidentiary)
- 10/10/78 190 Filed: Deft School Board's Amendment to deft's memo in support of submitted electoral plans — REFERRED
- 10/17/78 191 Filed: Plfs' reply to deft School Board's Amended memorandum — REFERRED
- 10/18/78 192 Filed: Cy ltr from Atty Blacksher to Judge Arnow re: Charter Commission process
- 10/18/78 193 Filed: Cy ltr from Atty Fleming to Judge Arnow re: Charter Commission
- 10/19/78 Filed: Transcript of Non-Jury Trial (9 volumes)



- 11/7/78                      Record-on-Appeal mailed to USCA-5th Circuit — copies of dockets w/trans. 1tr to all counsel — cc: Judge Arnow & John Suda — Exhibits to be mailed by Appellants
- 11/7/78      194      Filed: Cy 1tr from Atty Lott to Clerk, USCA-5th Circ. re: motion to expedite appeal
- 11/7/78      195      Filed: Cy 1tr from Atty Fleming re: docketing fee
- 11/29/78      196      Filed: Copy 1tr from Judge Arnow to Mr. Oldmixon
- 12/5/78      197      Filed: Notice of substitution of parties — substituting John E. Frankel, Jr. for Jack Kenney as County Commissioner
- 2/5/79                      Judge's Memo to refer back in ten days (2/15/79)
- 2/13/79      198      Filed: Deft County's Offer of Judgment for legal services
- 2/15/79      199      Filed: Defts' memorandum regarding preclearance remedy
- 2/20/79      200      Filed: CONSENT ORDER w/respect of plfs' attys' fees to be paid by deft School Bd Judgment entered in favor of plfs & against deft School Board in the amount of \$48,000.00 in full satis. of plfs' claims for attys' fees to 12/31/78 — Pending resolution of appeal the above amount shall be placed in a certificate of deposit or some other interest-bearing account w/periodic int. realized to be made payable to plfs' attys', etc. — This judgment shall have no effect upon & shall be entered w/o prejudice to plfs' claims for

attys' fees against Deft School Board & members w/respect to work performed after 12/31/78 & against all other defts in this & the companion 77-0433 — copies to all counsel

- 2/20/79 201 Filed: Memorandum decision concerning preclearance remedy
- 2/27/79 202 Filed: School Board's suggestion of parties — REFERRED
- 2/27/79 203 Filed: Memorandum decision concerning remedial plan — copies to counsel
- 2/27/79 204 Filed: Order in accordance w/memo decision — re-apportioned to 5 single-member districts as prescribed in plan filed 8/24/78 as attached w/map; at next primary & general election in 1980, board to be reduced from 7 to 5 members; those members elected in 1980 from districts 1, 2 & 3 to serve 2 year terms and those elected from 4 & 5 shall serve 4 years and thereafter, all members to be elected for 4 year terms; after each federal decennial census, districts to be re-apportioned; enjoining County School district, school board, individual members, supervisor of elections, from failing to redistrict as set out, holding elections as redistricted; retaining jurisdiction for 5 years — copies to counsel of record — recorded in COB #21, Pg 16-19
- 3/5/79 205 Filed: Consent ORDER W/respect to plfs' attys' fees to be paid by Deft Escambia County — copies to all counsel
- 3/12/79 206 Filed: AMENDED CONSENT ORDER

- |         |     |   |
|---------|-----|---|
| 3/29/79 | 207 | Filed: Deft School Board Member Sam Forester's Notice of Appeal — cert. copy to USCA 5th Circuit w/cert. copy docket sheets cc: all counsel & Deft SB Member  |
| 4/20/79 | 208 | Filed: Cy ltr from Court Reporter to Mr. Forester re: Transcript  |
| 4/27/79 | 209 | Filed: Motion to withdraw appeal — REFERRED<br><br>Court Reporter Notes: Box 43 Col. 2, 3, 4, 5, 6  |
| 5/15/79 |     | Deft Sam Forester's Motion to withdraw appeal stamped "GRANTED — The court being advised this appeal has not yet been docketed." — copies of motion w/endorsement to all counsel & School Board Member Sam Forester & USCA-5 Cir. |
| 7/5/79  | 210 | Filed: Notice of proposed county charter  |
| 3/17/79 | 211 | Filed: Plfs motion and memo for tentative approval of proposed charter reapportionment plan   |

- 3/17/79 212 Filed: Clerk's notice of hearing on motion for tentative approval of proposed charter reapportionment plan — set 9/8/79 @ 9 AM — copies to counsel of record
- 9/21/79 Hearing held from 2 — 3:15 PM order to be entered on county plan and charter plan
- 9/24/79 213 Filed: Memo decision — giving tentative approval as suggested by the parties, to the reapportionment plan contained in the proposed County Charter to be submitted to the referendum election 11/6/79; such approval is subject to the condition that the single member district boundaries subsequently drawn by reapportionment commission, if charter is approved, to be submitted to the court for review and approval as adequate remedy for the present racially discriminatory election system — copies to counsel of record
- 11/9/79 Letter from Judge to all counsel setting hearing on 11/26/79 re: voting plan
- 11/29/79 214 Filed: Escambia County's memo in support of preserving incumbency pending remedial redistricting — handed to L.C.
- 1/29/79 215 Filed: Notice of substitution of parties — Woolard for Deese-County Commission
- 11/29/79 216 Filed: Plfs' memo re: preserving incumbency — handed to L.C.
- 12/3/79 217 Filed: Memo decision on County Commissioners reapportionment — copies to counsel

- 12/3/79    218    Filed: Order (WEA) on memo decision that County Commissioners to be reapportioned to 5 single-member districts w/boundaries to conform to those adopted in 2/27/79 order w/description appended to order; at next primary & general elections in 1980 single-member districts will be elected but jurisdiction is retained to alter date of elections on motion; to preserve staggered terms, commissioners from Dist. 1, 2 & 3 shall serve 4-year terms & those elected from Dist. 4 & 5 to serve 2 yrs initially, but 4 yrs thereafter; after publication of decennial census, districts shall be reapportioned to comply w/one-person, one-vote requirements; that County Commissioners, individually & in official capacities & Supervisor of Elections, their successors, agents, etc. are enjoined from failing to redistrict & reapportion & to hold elections as redistricted; retaining jurisdiction for 5 yrs. unless changed for further orders as necessary copies to counsel, recorded in COB #21, Pgs 239 to 243
- 1/3/80    219    Filed: Escambia County's Notice of Appeal (Rec'd w/o filing & docket fees 1/2/80)
- 1/3/80       Trans 1th to USCA w/cert. copy notice of appeal & docket sheets — cc: all counsel of record
- Court Reporter Notes: Box 49 Col. V-H. 1-26-79, 9-25-78
- 1/18/80       Record-on-appeal mailed to USCA cc: all counsel of record

- 1/23/80 220 Filed: Motion of Deft Escambia County for stay of 12/3/79 Order of Elections w/memo
- 2/6/80 221 Filed: Notice of hearing on motion for stay set 2/15/80 at 10: AM — copies to all counsel
- 2/7/80 222 Filed: Plfs' memo opposing defts' application for stay of elections
- 2/15/80 223 Filed: ORDER (WEA) denying deft County's Motion for stay of elections — copies to all counsel
- 2/26/80 224 Filed: Notice of Appeal by Deft County
- 2/26/80 Record on appeal consisting of Documents #220 - 224 mailed to USCA — cc: all counsel of record
- 3/23/81 225 County's stip. that Patricia D. Wheeler be substituted as counsel for the county in place of Richard I. Lott
- 3/23/81 226 County's entry of appearance of Patricia D. Wheeler as counsel for Escambia County
- 4/13/81 227 ORDER (USCA) Denying plfs' motion for restoration of USDC injunctions
- 8/17/81 228 MOTION for the payment of attorney's fees and costs with respect to issues concerning school board
- 8/31/81 229 Consent Order (WEA) re: plfs' attys' fees to be paid by shool board — copies to counsel of record
- 11/16/81 230 JUDGMENT issued as a mandate affirming District Court Judgment — REFERRED

- 12/22/81    231    Plfs' motion and brief for award of attys' fees and costs w/affidavits
- 12/28/81    232    Amended motion for award of attys' fees and costs w/exhibit attached
- 1/5/82       233    Deft Marshall's response to plfs' motion and brief for award of attys' fees and costs
- 2/5/82       234    Notice of hearing set for 2/25/82 at 11:00 am-copy to all counsel
- 2/25/82    235    ORDER (WEA) Setting case for evidentiary hearing 3/29/82 at 9: AM — 1 day — copies to all counsel
- 3/3/82       236    STIPULATION of w/drawal of counsel
- 3/3/82       237    APPEARANCE of Paula G. Drummond as atty for Escambia County
- 3/8/82       238    MOTION for production of documents under Rule 34 by Marshall
- 3/8/82       239    MOTION to shorten time to respond to motion for production of documents — REFERRED
- 3/9/82       240    AMENDMENT to Deft Marshall's response to plfs' motion & brief for award of attys' fees & costs & MOTION to deny same & hearing thereon
- 3/9/82       241    NOTICE of deposition of Carol Ann Marshall on 3/19/82
- 3/10/81    242    ORDER (WEA) GRANTING deft Carol Ann Marshall's motion to shorten time from 30 to 14 days for plfs to respond to deft's motion for production of documents. — copy to all counsel

- 3/22/82    243    PLFS' RESPONSE to deflt Marshall's motion for production of documents — REFERRED
- 3/23/82    244    Deflt. Marshall's motion for hearing & decisions prior to evid. hearing set 3/29/82 & for reasonable delay of evid. hearing on attys' work & expense — REFERRED
- 3/25/82    245    Plfs' letter-memo In support of motion for atty's fees & costs awarded jointly & severally — REFERRED
- 3/25/82    246    Plfs' letter-memo in oppo to deflt. Marshall's motion of 3/23/82 — REFERRED
- 3/25/82    247    Plfs' motion to have County held jointly & severally liable for attys fees & cost
- 3/26/82    248    DEPOSITION of Carol Ann Marshall taken 3/19/82
- 5/14/82    249    JOINT MOTION to approve consent judgment w/proposed judgment — REFERRED
- 5/24/82    250    Consent Judgment — plfs motion for attys fees & costs against Carol Ann Marshall is settled & dismissed; plfs claim for attys fees & costs against Escambia County dismissed w/out prejudice; Carol Ann Marshall to pay plf \$8,000 for a claims for fees & costs; all other motions pend. with regard to fees & costs withdrawn — copies to counsel of record
- 6/7/82    251    Deflt. School Bd's motion for preclearance of school board member residence areas & memo in support



- 6/17/82 252 Plfs obj. to preclearance — REFERRED
- 6/17/82 253 Plfs letter-memo in support of objections to preclearance
- 7/1/82 254 ORDER (WEA) conditionally approving pre-clearance of School Board Election District copies to counsel
- 7/6/82 255 Deft. School Bd's cert copy of RESOLUTION revising districts — REFERRED Wea
- 7/6/82 256 Civil subpoenas showing svc on Jim C. Bailey on 7/1/82

## Court of Appeals

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 78-3507

HENRY T. McMILLAN, ET AL.,  
*Plaintiffs-Appellees,*

versus

ESCAMBIA COUNTY, FLORIDA, ET AL.,  
*Defendants-Appellants.*

\* \* \* \* \*

ELMER JENKINS, ET AL.,

versus

CITY OF PENSACOLA, ET AL.,  
*(Consolidated with 79-1633 & 80-5011. Defendants-Appellants.)*

FILED 8/9/78

Judge Winston E. Arnow

Docket Number CA 77-0432 &amp; CA 77-0433

(Consolidated in D.C.)

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APPEARANCE

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DATE NR ATTORNEYS FOR APPELLANT

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		FOR ESCAMBIA COUNTY:
12/6/78		Richard Y. Lott, County Att., 23 West Government Street, Pensacola, Florida 32501
12/6/78		John W. Flemming -do- (904) 432-8374
4/10/81		Patricia D. Wheeler -do- (904) 436-5450 (out of case)

3/1/82 Paula G. Drummond -do-  
 FOR SCHOOL BOARD  
 RAY, PATTERSON & KIEVIT, 226  
 Palafox Street, Pensacola, Florida 32501

12/6/78 FOR ALL DEFENDANTS:  
 Charles S. Rhyne, 1000 Connecticut  
 Ave., N.W., Suite 800, Washington,  
 D.C. 20036.

12/6/78 William S. Rhyne -do-  
 12/6/78 Donald A. Carr (out of the case)

12/6/78 4 For CITY OF PENSACOLA:  
 Don J. Canton, City Att., Pensacola, FL  
 (904) 436-4320

#### ATTORNEYS FOR APPELLEES

3/26/79 J. U. Blacksher, Mobile, AL 36601 (205)  
 433-2000

3/26/79 Larry Menefee -do-

CRAWFORD, BLACKSHER, FIG-  
 URES & BROWN, 1407 Davis Ave.,  
 Mobile, Al. 36603

12/7/78 J. U. Blacksher -do- (205) 432-1681  
 1-10-29 Kent Springs, 324 West College Ave.,  
 Tallahasee, Florida 32301 (904)  
 224-87-01

Jack Greenberg, 10 Columbus Circle,  
 Suite 2030, New York, New York 10010  
 (212-586-8397)

12-7-78 Eric Schnapper, -do-  
 Edward Still, Suite 400, Commerce  
 Center, 2027 1st Ave., N., B'hm, AL  
 35203 (205-322-6631)

12/8/28 Refer Panel to City of Mobile v. Bolden  
 in U.S. Supreme Court #77-1844 - 5th  
 Circuit #12

7/31/79 Cons. w/79-1633 after this was screened  
 xxxxxxxxxxxx 79-1633 was classed IV  
 automatically, xxxx

7/6/83 Call Betty Killan xxxxxxxxxxxxxxxxxxxxxxxx  
 rehearing ruled (904) 433-0004.

8/23/82 Craig Pittman — 800-342-2263 Pen-  
 sacola Journal, also call Pittman when  
 rehearing is ruled on.

#### **1. Record, Exhibits and Brief Information**

11/14/78 Record on Appeal

11/14/78 Exhibits

12/26/78 Brief for Appellants (City of Pensacola, et al.)

12/26/78 Brief for Appellants (County of Escambia, et  
 al.)

3/2/79 Brief for Appellees

3/19/79 Reply Brief for Appellants (City of Pensacola,  
 et al.)

6/16/80 Supp. Brief for Appellants (J)

5/12/80 Supp. Brief for Appellees (J)

7/23/82 Supp. Brief for Appellees (Ed to Plt. former  
 5th Cir. Judges)

7/23/82 Supp. Brief for Appellees (E'd to Plt. former  
 5th Cir. Judges)

12/26/78 Record Excerpts

3-19-79 Reply Br. for Appellants (County of Escam-  
 bia, et al) 5-9

#### **4. Extension Flg. Motion for:**

1-26-79 Appelle's Brief Ext. to 2-25-79

**5. Calendar Information**

- 2-14-80 Case assigned for 3-26-80 in EB  
Hearing Panel: JPC-Peck-PAK
- 3-26-80 Case Argued ☐ by Appellant ☐ by Appellee

**6. Opinion Information**

- 2-19-81 \*Opinion Rendered  
PAK Aff. in Pt. Rev. in Pt.  
\*Issd in xxxxx signed  
Printed opinion distributed 3-9-81 p. 4317

**7. Rehearing Information**

- 3-2-81 Sub. 3/8/81 PAK
- 4-3-81 Petition for Rehearing (P) (J) ☐ Appellee ☐  
Reg. ☐ Suggestion En Banc
- 10-8-82 xxxxxx for Rehearing (P) on the Rehearing  
Opinion ☐ Appellant ☐ En Banc
- 11-04-82 Order Denying Rehearing of 10-08-82
- 9-24-82 ☐ Opinion also filed in 80-5011

**8. Motions**

- 4-9-79 Consolidate Appeals W/79-1633, clerk BNS  
dated 4-17-79.
- 2-21-79 Leave to File Brief in Excess Pgs. 70 pages  
Court GBT filed 2-2-79
- 5-12-80 Leave to File Supp. Brief RCV 5-12-80
- 3-2-81 Stay of Mandate (CofP). Response filed by  
3-10-81 sub 3/10/81, Granted. Court Clerk,  
PAK. Dated 3-12-81.
- 11-16-82 Stayg Mot. (Appellant) Response filed by Ap-  
pellee's. Dated 11-18-82. Court Clerk, PAK.  
Dated 11-23-82.

## 9. Other Docket Entries

- 12/6/78 Flg. Notice of appellants, Escambia County and members of its Board of County Commissioners for substitution of parties. (SEND TO SCREENING JUDGE).
- 11/30/79 Flg. Appellants Notice of substitution of parties. (SEND TO PANEL)
- 12/7/79 Flg. Appellant's Application for Expedited consideration of Merits appeal.
- 12/10/79 Flg. Appellee's response in support of motion to expedite appeal.
- 12/18/79 Flg. Appellee's Supp. Authority. (Send to Panel)
- 12/26/79 Flg. Order GRANTING appellants' motion to expedite the appeal.
- 2-13-80 Flg. Appellees' supp. authority. (SEND TO PANEL) (also fld. 79-1633)
- 3-10-80 Flg. Order granting motion for stay of remedial election pendente lite and further ordering that this appeal be consolidated for argument and disposition with Nos. 79-1633 and 80-5011 (JPC, JWP & PAK) (also filed in Nos. 79-1633 and 80-5011)  
(Cont.'d)

## 10. Judgment or Mandate Information

- 10-23-81 Jdgt. as Mdt. Issd. to Clerk (as to Jenkins)
- 11-12-81 Jdg. as Mdt. to Clerk (as to McMillan & Escambia, School Board)
- 12-10-82 Record on Appeal Retd. to Clerk (29 volume)
- 12-10-82 Exhibits Retd. to Clerk 4 boxes
- 11-23-82 Mandate Issd. to Clerk  
Mandate Stayed to Order (3-12-81)

**11. Supreme Court Information No. 80-1946**

- 5-28-81 Notice of Flg. of Cert. Pet. on 5-19-81
- 9-17-81 Notice of dismissal of petition f/certiorari in SC 9/11/81.
- 12-6-82 Notice of Mot. for Stay - Denied 12/2/82
- 2-15-83 Notice of fld. An Appeal on 2/2/83

**9. Other Docket Entries (Con't)**

- 4-29-80 Flg. Appellants, City of Pensacola & Escambia, et al., supp. authority, (CE) (Also filed Nos. 79-1633 and 80-5011).
- 5/21/80 Flg. Appellees' letter dt. 5/20/80 replying to ct.'s letter of 5/16/80 regarding flg. of an additional brief. (also fld. in Nos. 78-3507 & 79-1633) (C.E.).
- 10/28/80 Flg. Appellees' letter dt. 10/21/80 calling Ct.'s attn. to attached brief filed by U.S. in case No. 78-3241. (CE)
- 11-12-80 Flg. appellants' letter of 11-5-80 as supp. authority. (CE)
- 11-24-80 Flg. appellants' Supp. Authority. (C.E.) regarding each local government sub. 3/10/81 PAK). Petition for rehearing and en banc. (sub 3/11/81 PAK)
- 3-12-81 Flg. Order GRANTING issuance of separate mandates for each of the governmental defendants in 78-3507. (SEE ORDER IN FILE) Further ORDERING Stay of mandate pending the filing and disposition of a jurisdictional stmt on appeal to the S.C. (PAL)
- 4-2-81 Flg. Appellees' motion for restoration of injunctions.

- 4-7-81      Flg. City of Pensacola opposition to Plaintiffs' motion for restoration of injunction. (sub 4/7/81 PAK)
- 4-10-81     Flg. motion of Appellees' for issuance of mandate in 78-3507 to the school board. Sub PAK 4/27/81
- 4-27-81     Flg. motion of Appellees' for issuance of mandate in 78-3507 as to the school board. Sub PAK 4/27/81
- 4/28/81     Flg. Order DENYING appellees' motion for issuance of the mandate as to the school board. (PAK)
- 5-11-81     Flg. Appellee, City of Pensacola Notice of Appeal to the U.S. Supreme Court. LTR xxxxx
- 9-10-81     Flg. Joint motion for issuance of the mandate in 78-3507 Sub PAK
- 9/29/81     Flg. order DENYING Joint Motion for issuance of the mandate in 78-5307.
- 10/1/81     Flg. motion of Phillip M. Waltrip to Intervene. (Sub. PAK 10/6/81)
- 10-5-81     Flg. joint motion for issuance of mandate in 78-3507 and 79-1633
- 10-9-81     Flg. Appellees MEMORANDUM In Support of Motion f/issuance of the mandate & Supporting Motion f/Immediate Remand.
- 11-3-81     Flg. JOINT MOTION F/Issuance of Mandate as to the School Board w/MEMORANDUM. Sub. PAK 11/8/81.
- 11-12-81    Flg. Order GRANTING joint motion for issuance of the mandate as to the Escambia County School Board. (PAK)



- 11-12-81 Flg. Order DENYING motion of Phillip M. Waltrip to intervene (COLEMAN, PAK, PECK)
- 12-14-81 Flg. Phillip M. Waltrip's REQUEST f/Clarification. Sub xxxx 12/18/81
- 3-1-82 Flg. appellant's STIPULATION f/Substitution of Counsel.
- 3-1-82 Flg. appellant's LETTER re Elections-CE.
- 3/8/82 Flg. order DENYING Waltrip's request for clarification of the Court's order of 12/14/81. (PAK)
- 7/27/82 Flg. appellee's MOTION To Dissolve Stay of Elections. Sub JCG
- 10-29-82 Flg. appellees MOTION To Dissolve Stay Of Elections.
- 11-8-82 Flg. appellants' OPPOSITION To The Appellees' Motion To Dissolve Stay of Elections.
- 11-04-82 Flg. order denying motion of State Association of County Commissioners for leave to file amicus curiae brief in support for rehearing en banc. (PAK).
- 11/12/82 Flg. appellee's letter in response to appellant's opposition to appellees' motion to dissolve stay of elections. (Sub. supp. 11/15 Unit A&B)
- 11/12/82 Flg. motion of Sumter County for leave to file amicus curiae brief in support for rehearing en banc.
- 11/12/82 Flg. motion of Hendry County Board of Commissioners for leave to file brief as amicus curiae in support of for rehearing en banc.
- 11/16/82 Flg. motion of Seminole County, Fl for leave to file amicus curiae brief in support of for rehearing en banc of appellants.

- 11/16/82 Flg. motion of appellants for stay of mandate pending to Supreme Court. (Sec. 3. 8) Sub. PAK
- 11/16/82 Flg. motion of Citrus County for leave to file amicus curiae brief in support of petition for rehearing en banc of appellants.
- 11/18/82 Flg. response of appellees to appellants motion for stay of mandate. (Sub. PAK 11/18/82)
- 11/23/82 Flg. order DENYING motion of Sumter County for leave to file amicus curiae in support of the suggestion of en banc. (PAK) (bh)
- 11/23/82 Flg. order DENYING motion of Hendry County, Fla., for leave to file amicus curiae in support of the suggestion en banc. (PAK) (bh)
- 11/23/82 Flg. order DENYING motion of Seminole County, FLA for leave to filed amicus curiae in support of the suggestion en banc. (PAK) (bh)
- 11/23/82 Flg. order DENYING of Citrus County for leave to file amicus curiae in support of suggestion en banc. (PAK) (bh)
- 11/23/82 Flg. order DENYING motion of Escambia County, et al. for a stay of the mandate pending application for review to the United States Supreme Court. (COLEMAN, PECK, PAK)
- 11/24/82 Flg. order DENIED AS MOOT the appellees' motion to dissolve stay elections (PAK)
- 4/20/83 Flg. order of the Supreme Court noting probable jurisdiction.

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 80-5011

HENRY T. McMILLAN, ET AL.,  
*Plaintiffs-Appellees,*

versus

ESCAMBIA COUNTY, FLORIDA, ET AL.,  
*Defendants-Appellants.*  
*(Consolidated with 79-1633 & 78-3507)**Cross Appeal No. 80-5130X*FILED 1/3/80 (Escambia, et al.) 2-26-80 (Escambia, et al.)  
Judge Winston E. Arnow  
Docket Number PCA 77-0432

Location of Hearing EB

Date of Hearing 3-26-80

Hearing Panel JPC-Peck-PAK

Hon. John W. Peck  
Senior Circuit Judge  
613 U.S. Courthouse

---

APPEARANCE

DATE C-

O-

DE ATTORNEYS FOR APPELLANT

---

## FOR ESCAMBIA COUNTY:

1/11/80

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32501

4/10/80 Patricia D. Wheeler, County Atty  
-do-(904) 436-5450

3/4/82 Paula G. Drummond -do-

3/26/80 RHYNE & RHYNE, William S. Rhyne,  
1000 Connecticut Ave., N.W., Suite 800,  
Washington, D.C. 20036 202/466-5420

1/14/80 Charles S. Rhyne -do-

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Birmingham, Alabama 35203  
205/322-6631-7479

xxxxxx

See 78-3507, 79-163

#### 1. Record, Exhibits and Brief Information

1-21-80 Record on Appeal

3-4-80 Supp. Record

2-15-80 Brief for Appellants

3-18-80 Brief for Appellees

7-23-82 Supp. Brief for Appellants CE'd to All Former  
Fifth Judges

7-23-82 Supp. Brief for Appellee CE'd to All Former  
Fifth Judges

2-15-80 Record Excerpts

**2. Miscellaneous Filings**

1/7/80 (E) Dup. Notice of Appeal and Clerk's Statement of Docket Entries

\* \* \*

**5. Calendar Information**

3-10-80 Case Assigned for 3-26-80 in EB  
Hearing Panel: JPC-Peck-PAKZ

3-26-80 Case Argued ☐ by Appellant ☐ by Appellee

**6. Opinion Information**

2-19-81 \*Opinion Rendered, PAK  
\*issd. in typewritten form  
Printed opinion distributed 3-19-81 p. 4329

**7. Rehearing Information**

3-3-81 Mot. for Ext. - Ext. to 4-4-81 PAK

4-3-81 Petition for Rehearing (P) (CJ) ☐ Appellee ☐ Reg. ☐ Suggestion En Banc

10-8-82 Suggestion for Rehearing (P) On the Rehearing Opinion also fed. 78-3507.

10-22-82 Order denying Reh. of 04/03/81

11-04-82 Order Denying Rehearing of 10-08-82

9-24-82 Opinion S9. Also filed in 78-3507 issued in typewritten form pp 15704

**8. Motions**

2-15-80 Consolidate Appeals 78-3507 & 79-1633 Appellees. Dated 2-25-80, 3-10-80

11-16-82 Stay of Mandate (Appellants) Appellees  
11-18-82 PAK Court Clerk. Dated 11-23-82

### 9. Other Docket Entries

- 1-14-80     Fig. Appellant's Notice of Issues on Appeal.  
(Send to Screening Judge)
- 2-26-80     Fig. Appellants' Application for Stay of  
Remedial election order pendente lite, etc. (sub  
2-26-80 JRC)
- 2/29/80     Fig. Appellees' opposition to appellants' ap-  
plication for stay of elections.
- 3-10-80     Fig. Order granting Appellant's Motion for  
Stay of Remedial Election Pendente Lite, and  
further ordering that this appeal be con-  
solidated with Nos. 79-3507 and 79-1633 (JPC,  
JWP & PAK) (also filed in Nos. 78-3507 and  
80-5011)
- 4-29-80     Fig. Appellants, City of Pensacola & Escam-  
bia, et al., supp.authority. (CE) (Also filed  
78-3507, 80-5011).
- 5/21/80     Fig. Appellees' letter dtd. 5/20/80 replying to  
court's letter of 5/16/80 regarding the filing of  
an additional brief. (also filed in #68-3507 &  
79-1633) (C.E.).  
(Continued)

### 10. Judgment or Mandate Information

- 3-2-81     Bill of Costs
- 10-23-81   Jdgt. as Mdt. Issd. to Clerk S9 (3-5-81) (as to  
Jenkins)
- 11-23-82   Jdgt. as Mdt. to Clerk
- 12-10-82   Record on Appeal Retd. to Clerk (2 vols)

**11. Supreme Court Information No. 82-1295**

12-6-82 Not. of Mot. for Stay "Denied" 12-2-82

2-15-83 Not of flg. an appeal on 2-2-83

**9. Other Docket Entries (Con't)**

9-12-80 Flg. appellee's supplemental authority (Also filed in 79-1633)

11-12-80 Flg. Appellant's letter of 11-5-80 as supp.authority. (CE)

3-11-81 Flg. Appellees' amended motion to extend time for filing petition for rehearing and en banc. (Sub 3/11/82 FAK)

3-12-81 Flg. Order GRANTING appellees, McMILLAN, et al. ext. time to April 4, 1981 in which to file pet. for rehearing & suggestion en banc. (See Order in File). (PAK)

3-1-82 Flg. appellant's LETTER re Election-CE.

9-24-82 Flg. opinion GRANTING appellees' petition for rehearing (regular) and VACATING opinion of 2-19-81; AFFIRMED and REMANDED (PAK) (SIGNED).

10-19-82 Flg. State Association of County Commissioner's MOTION F/Leave To File Amicus Curiae Brief in support of petition f/rehearing.

10-29-82 Flg. appellees' MOTION To Dissolve Stay of Elections. Sub.

11-8-82 Flg. appellant's OPPOSITION To The Appellees' Motion To Dissolve Stay of Elections.

11-04-82 Flg. order denying motion of State Association of County Commissioners for leave to file amicus curiae brief in support of suggestion for rehearing en banc. (PAK).

- 11/12/82 Flg. appellee's letter in response to appellant's opposition to appellees' motion to dissolve stay of elections. (Sub. xxxxxxxx)
- 11/12/82 Flg. motion of Sumter County for leave to file amicus curiae brief in support of for rehearing en banc.
- 11-12-82 Flg. motion of Hendry County Board of Commissions for leave to file brief in support of for rehearing en banc.
- 11/16/82 Flg. motion of Seminole County, Florida, for leave to file amicus curiae brief in support of petition for rehearing en banc of appellants.
- 11/16/82 Flg. motion of appellants for stay of mandate pending See S. 8 (Sub PAK 11/18/82)
- 11/16/82 Flg. motion of Citrus County for leave to file amicus curiae brief in support of for rehearing en banc of appellants.
- 11/18/82 Flg. appellees response to appellants motion for stay of mandate. (SUB. PAK 11/18/82.)
- 11/23/82 Flg. order DENYING motion of Sumter County for leave to file amicus curiae in support of the suggestion of en banc. (PAK) (bh)
- 11/23/82 Flg. order DENYING motion of Hendry County, FLA, for leave to file amicus curiae in support of the suggestion en banc. (Pak) (bh)



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

HENRY T. McMILLAN, ROBERT CRANE, :  
CHARLES L. SCOTT, WILLIAM F. :  
MAXWELL and CLIFFORD STOKES, :

Plaintiffs, :

vs. :

ESCAMBIA COUNTY, FLORIDA; GERALD :  
WOOLARD, KENNETH KELSON, ZEARL :  
LANCASTER, JACK KENNEY, MARVIN :  
BECK, individually and in their official :  
capacities as members of the BOARD OF :  
COUNTY COMMISSIONERS OF :  
ESCAMBIA COUNTY; SCHOOL DISTRICT :  
OF ESCAMBIA COUNTY; THE SCHOOL :  
BOARD OF ESCAMBIA COUNTY; :  
PETER R. GINDL, CAROL MARSHALL, :  
RICHARD LEEPER, LOIS SUAREZ, A.P. :  
BELL, FRANK BIASCO and JAMES BAILEY, :  
individually and in their official capacities :  
as members of the ESCAMBIA COUNTY :  
SCHOOL BOARD: JOE OLDMIXON :  
individually and in his official capacity :  
as SUPERVISOR OF ELECTIONS FOR :  
ESCAMBIA COUNTY :

Defendants. :

FILED  
MAR 18  
3:45 PM 1977  
OFFICE OF CLERK  
U.S. DISTRICT CT.  
NORTH DIST. FLA.  
PENSACOLA, FLA.

**COMPLAINT**

**I.**

**Jurisdiction**

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. The amount in controversy exceeds \$10,000.00 exclusive of interest and costs. This is a suit in equity arising out of the Constitution of the United

States; the First, Thirteenth, Fourteenth and Fifteenth Amendments, and 42 U.S.C. §§ 1973 and 1983. This is also an action for declaratory judgment under the provisions of 28 U.S.C. §§ 2201 and 2202.

## II.

### **Class Action**

Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a) and 23(b)(2), Federal Rules of Civil Procedure. The class which plaintiffs represent is composed of all black citizens of Escambia County, Florida. All such persons have been, are being, and will adversely be affected by the defendants' practices complained of herein. The class constitutes an identifiable social and political minority in the community who have suffered and are suffering invidious discrimination. There are common questions of law and fact affecting the rights of the members of this class who are and continue to be deprived of the equal protection of the laws because of the election system detailed below. These persons are so numerous that joinder of all members is impracticable. There are questions of law and fact common to plaintiffs and the class they represent. The interests of said class are fairly and adequately represented by the named plaintiffs. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

## III.

**Plaintiffs**

A. Plaintiffs Henry T. McMillan and Robert Crane are black citizens of Escambia County, over the age of twenty-one years, who live within the City of Pensacola.

B. Plaintiffs Charles L. Scott, William F. Maxwell and Clifford Stokes are black citizens of Escambia County, over the age of twenty-one years, who live in unincorporated areas of Escambia County, Florida.

## IV.

**Defendants**

A. Escambia County is a political subdivision of the State of Florida. The Board of County Commissioners exercises general legislative, executive and administrative powers for Escambia County.

B. Charles Dease, Kenneth Kelson, Zearl Lancaster, Jack Kenney and Marvin Beck are the duly elected Commissioners of Escambia County.

C. The School Board of Escambia County is the supervisory and administrative body charged with conducting the affairs of the School District of Escambia County

D. Peter R. Gindl, Carol Marshall, Richard Leeper, Lois Suarez, A.P. Bell, Frank Biasco and James Bailey are the duly elected members of the School Board of Escambia County.

E. Joe Oldmixon is the Supervisor of Elections for Escambia County.

## V.

A. Escambia County is governed by a five-member County Commission. The Commissioners are elected at-large by the qualified voters of the County for five residency districts. The partisan election uses numbered places with a majority vote/run-off requirement. The Commissioners serve for four-year staggered terms.

B. The School Board of Escambia County is composed of seven members. Five of the members must reside in one of five residency districts and two may reside anywhere in the County. The candidates run for numbered places, non partisan elections which have majority vote/run-off requirements. The members serve for four-year staggered terms. The members are elected at large by the qualified voters of Escambia County.

C. Escambia County has a population of 205,334, according to the 1970 Census, of which 40,362 or 19.7% are black. The major urbanized area is in and around the City of Pensacola, which has 59,509 people within the corporate limits. There is a substantial degree of residential racial segregation. 43% of the black citizens of Escambia County reside in five census tracts having greater than 80% black population.

D. All of the present officeholders for the School Board and County Commission are white. There has never been a black citizen elected to either the School Board or County Commission. Qualified black citizens have sought elections to both the School Board and County Commission, but all have been defeated in elections characterized by racially polarized voting. The following black citizens have unsuccessfully sought election to the School Board: Mr. Elmer Jenkins in 1976 and Mr. O. Leverette in 1970. The following black citizens have unsuccessfully sought election to the County Commission:

Mr. John Reed, Jr., in 1966 and 1970 and Mr. Nathaniel Dedmond in 1970. The following black citizens have unsuccessfully sought election to the County Commission: Mr. John Reed, Jr., in 1966 and 1970 and Mr. Nathaniel Dedmond in 1970. The futility of blacks gaining seats on the County Commission and School Board is a major barrier in recruiting qualified black citizens to run for these public offices.

E. The present at-large election systems for both the School Board and County Commission, employing numbered places and a majority vote/run-off requirement, operate in Escambia County to discriminate against black residents of the County in that their voting strength is diluted or minimized by the white majority.

F. Black citizens in Escambia County have been subjected to official discrimination directly in the exercise of the franchise through devices such as the poll tax and white primary. Additionally, other forms of official discrimination, such as denial of equal access to educational opportunities, combine to preclude blacks from effectively participating in the election process.

G. The County Commission has historically been less responsive to the needs of the black citizens than they are to the needs of the white citizens. Black neighborhoods have received a proportionately smaller share of county services. The School Board has also been less responsive to the needs of the black citizens than to the needs of the white citizens. A segregated school system was maintained until the School Board was ordered by the federal court to desegregate. This continued policy of being less responsive to the needs and rights of black citizens has forced the black community repeatedly to return to the federal courts for protection of their rights.

H. As a direct result of these and other factors, the at-large systems of electing members of the Board of County

Commissioners and School Board of Escambia County, as designed and/or presently operated, deny plaintiffs and the class of black citizens they represent equal access to the political process leading to nomination and election to the County Commission and School Board and, with respect to said black citizens, are fundamentally unfair, all in violation of their rights protected by the First, Thirteenth and Fifteenth Amendments to the Constitution of the United States; both the Due Process and Equal Protection Clauses of the Fourteenth Amendment; the Voting Rights Act of 1965, 42 U.S.C. § 1973; and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

## VI.

Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a permanent injunction is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the unconstitutional election system described herein.

WHEREFORE, plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this action to be in every way expedited and upon such hearing to:

1. Grant plaintiffs and the class they represent a declaratory judgment that the election systems complained of herein violate the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. §§ 1973 and 1983.

2. Grant plaintiffs and the class they represent an order enjoining the defendants, their agents, successors, attorneys and those acting in concert with them and at their direction from holding, supervising, or certifying the results of any election for the School Board of Escambia

County and the Board of County Commissioners of Escambia County under the present election systems.

3. Order the apportionment of Escambia County School Board and the Escambia County Commission so that all members are elected from single member districts and the voting strength of black citizens is not debased, diluted, minimized or canceled out.

4. Award plaintiffs and the class they represent their costs in this action including an award of reasonable attorneys' fees.

5. Grant such other and further equitable relief as the Court may deem just and proper.

CRAWFORD, BLACKSHER, FIGURES  
& BROWN  
1407 DAVIS AVENUE  
MOBILE, ALABAMA 36603

By: \_\_\_\_\_

J.U. BLACKSHER  
LARRY T. MENELEE

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SUITE 2030  
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

HENRY T. McMILLAN, ET AL.,	)	
Plaintiff	)	
	)	
vs.	)	CIVIL ACTION
	)	NO. PCA
ESCAMBIA COUNTY, FLORIDA,	)	77-0432
ET AL.,	)	
Defendant.	)	
<hr style="width: 50%; margin-left: 0;"/>		)

ANSWER AND AFFIRMATIVE DEFENSES

ESCAMBIA COUNTY

Subject to their affirmative defenses contained herein and to any and all affirmative defenses and motions filed by the other defendants in this action, the Defendants, Escambia County, Florida, Charles Deese (erroneously referred to as Charles Dease in the Complaint), Kenneth Kelson, Zearl Lancaster, Jack Kenny, Marvin Beck, individually and in their official capacities as members of the Board of County Commissioners of Escambia County, and Joe Oldmixon, individually and in his official capacity as Supervisor of Elections for Escambia County, and for their answer to the complaint of Plaintiffs say:

I

**Jurisdiction**

Said Defendants admit the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343, but deny each and



every other allegation contained in paragraph I of the Complaint.

## II.

### **Class Action**

Said Defendants deny each and every allegation contained in paragraph II of the Complaint.

## III.

### **Plaintiffs**

Said Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph III of the Complaint and, therefore, deny same.

## IV.

### **Defendants**

Said Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV, subparagraphs C and D of the Complaint and, therefore, deny same; admit the allegation of paragraph IV, subparagraph A, except that defendants deny having any responsibility for the establishment or continuation of the present electoral system for County Commissioners; admit the allegations of subparagraphs B and E of paragraph IV, except that Charles Deese is erroneously referred to therein as Charles Dease.

## V.

Said Defendants admit the allegations of subparagraph A of paragraph V, except defendants deny there is any runoff requirement for general elections; allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V, subparagraph B of the Complaint and, therefore, deny same; admit that Escambia County had a population of 205,334, according to the 1970 Census, of which 40,362 or 19.7% are black and that the major urbanized area is in and around the City of Pensacola, which has 59,507 people within the corporate limits, but deny each, and every other allegation contained in paragraph V, subparagraph C, of the Complaint; admit that all of the present officeholders for the County Commission are white, but allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the balance of paragraph 5, subparagraph D, of the Complaint and, therefore, deny same; deny each and every allegation contained in paragraph V, subparagraphs E, F, G, and H, of the Complaint.

## VI.

Said Defendants deny each and every allegation contained in paragraph VI of the Complaint.

## VII.

Said Defendants are obligated to pay expenses for costs and attorneys fees for the defense of this action.

### FIRST DEFENSE

The Complaint fails to state a claim against said Defendants upon which relief can be granted.

### SECOND DEFENSE

The Complaint fails to state a cause of action because of its failure to allege a discriminatory intent on the part of said Defendants, or any other person, in establishing the election system complained of.

### THIRD DEFENSE

The Complaint fails to state a cause of action against said Defendants in their respective individual capacities because of its failure to allege any acts by said Defendants in their individual capacities and because of its failure to pray for any relief from said Defendants in their individual capacities as opposed to any relief from said Defendants in their respective representative capacities. In the Complaint no acts of commission or omission are attributed to any of said Defendants in their individual capacities. But, both from the caption and text of the Complaint, it is obvious that the Plaintiffs are attempting to sue both the Board of County Commissioners of Escambia County, Florida, a corporate entity which functions solely through its members in their representative capacities and the Supervisor of Elections as the individual members thereof personally, although the Complaint contains no allegations whatsoever of any individual acts done to, or omitted duties owed to, the Plaintiffs.

#### FOURTH DEFENSE

The relief prayed for by the Plaintiffs in their Complaint is impossible of performance by said Defendants since the election systems complained of in the Complaint and the conduct of the elections sought to be enjoined therein are not among the constitutional or statutory powers of said Defendants in their representative capacities but rather are, according to the Constitution and laws of the State of Florida, wholly within the powers and responsibilities of other officials, some of whom are not made parties to this suit and are not, therefore, within the jurisdiction of the Court. In doing any of the acts complained of in the Complaint, said Defendants were duly authorized by and acted under the authority of State law.

#### FIFTH DEFENSE

The State of Florida, the Department of State of the State of Florida, and Reubin O'D. Askew, Governor of the State of Florida, need to be joined in this action for a just adjudication of the issues. They are subject to service of process and their joinder will not deprive the court of jurisdiction over the subject matter of this action. In their absence, complete relief cannot be accorded among those already parties and they claim an interest relating to the subject matter of this action and are so situated that the disposition of the action in their absence may as a practical matter impair or impede their ability to protect that interest and leave Defendants subject to a substantial risk of incurring double multiple, or otherwise inconsistent obligations by reason of their claimed interest.

## SIXTH DEFENSE

The alleged claims asserted against said Defendants do not arise out of the same transactions, occurrences, or series of transactions or occurrences as the claims asserted against the other Defendants in this action, nor do the alleged claims involve questions of law or fact common to all Defendants. Said Defendants will, therefore, be put to undue expense if they are required to proceed with their defense without a severance of the issues. The trial of the action will be confused by a joint trial of the claims asserted against said Defendants and against the other Defendants in this action, all to the prejudice of said Defendants and, therefore, the claims asserted against said Defendants should be severed from the claims asserted against the other Defendants in this action and tried separately.

## LAST DEFENSE

Said Defendants hereby adopt all other motions, memoranda in support thereof, and defenses herein filed on behalf of the other Defendants in this action as their own motions, memoranda in support thereof, and defenses in the same manner and to the same extent as though each paragraph thereof were herein fully set forth.

WHEREFORE, said Defendants pray that the Complaint be dismissed with prejudice and that they be awarded their attorney's fees and costs.

**RICHARD I. LOTT**  
**COUNTY ATTORNEY**

---

/s/

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer and Affirmative Defenses was furnished by regular U.S. Mail to James U. Blacksher, Attorney for Plaintiffs, 1407 David Avenue, Mobile, Alabama 36603; Larry T. Menefee, Attorney for Plaintiffs, 1407 Davis Avenue, Mobile, Alabama 36603; Kent Spriggs, Attorney for Plaintiffs, 324 West College Avenue, Tallahassee, Florida 32301; Jack Greenberg, Attorney for Plaintiffs, Suite 2030, 10 Columbus Circle, New York, N.Y. 10019; Eric Schnapper, Attorney for Plaintiffs, Suite 2030, 10 Columbus Circle, New York, N.Y. 10019; Charles S. Rhyne, Esquire, 400 Hill Building, Washington, D.C. 20006, Louis F. Ray, Jr., Attorney for the School Board of Escambia County, Sixth Floor Seville Tower, Pensacola, Florida 32501; Don Caton, attorney for the City of Pensacola, City Hall, Pensacola, Florida 32501, this 27th day of April, 1977.

---

/s/

RICHARD I. LOTT  
COUNTY ATTORNEY

**CONSOLIDATION ORDER**  
[CAPTION OMITTED IN PRINTING]

**ORDER**

It is ORDERED:

1. These cases are consolidated for the purpose of discovery only.

2. Originals of all depositions will be filed in 77-0432, with a copy of each such deposition filed in 77-0433, and with the parties agreeing, and the court approving, that the copy of each deposition filed in such suit shall be utilized as fully and to the same extent as though it were the original.

3. *McMillan, et al. vs. Escambia County, Florida, et al.*, No. 77-0432, and *Jenkins, et al. vs. City of Pensacola, et al.*, No. 177-0433, are hereby conditionally certified as a class action under Rule 23(b)(2), Federal Rules of Civil Procedure, with the class defined as all black citizens in Escambia County and the City of Pensacola, respectively. This conditional certification under Rule 23(c), Federal Rules of Civil Procedure, may be altered or amended before decision on the merits, if appropriate.

4. Counsel for all parties will submit memoranda of law by May 30, 1970 on the following issues:

(a) whether the State of Florida, the Governor and the Department of State are indispensable parties in No. 77-0432 and No. 77-0433; and

(b) whether these actions should proceed against members of the County Commission, County School Board and City Council in their individual capacities.

5. Unless time is extended by order of the court for good cause shown, all discovery proceedings, including

depositions of witnesses to be used for trial purposes, in these cases must be completed on or before August 18, 1977.

6. No motion seeking extension of time will be granted unless such motion is served and filed sufficiently in advance of the discovery completion date to allow it to be heard and disposed of, under the local rules of this court, on or prior to such discovery completion date.

DONE AND ORDERED this 18th day of May, 1977.

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

WINSTON E. ARNOW  
Chief Judge



**ARNOW, C. J. LETTER TO COUNSEL OF RECORD**  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF FLORIDA**  
 West Office Box 12347  
 Pensacola, Florida 32581

Winston E. Arnow  
 Chief Judge

August 4, 1977

Re: Henry T. McMillan, et al. vs.  
 Escambia County, Florida, et al.,  
 PCA 77-0432; Elmer Jenkins, et al.,  
 vs. City of Pensacola, Florida, et al.,  
 PCA 77-0433

Gentlemen:

As all of you know, by order of May 18, 1977, I required that the parties submit memoranda on two issues raised by certain "defenses" included in defendants' answer — one was the question whether the State, the Governor and the Department of State are indispensable parties. The other was the question whether these actions should proceed against the individual defendants in their individual capacities.

When there is a lack of necessary or proper parties, it is my understanding that such matter is properly brought before me by motion. My understanding of the rule is that motion is also required to dismiss a party who is not properly a party.

These questions concerned me during initial hearings because obviously if certain parties need to be joined they should be brought into the suit at an early stage so that we are not confronted with going back into discovery or other proceedings that took place before they were in the suit.

Since these issues are raised as defenses, I cannot now resolve them. I have, however, gone over the memoranda presented.

Counsel of Record  
PCA 77-0433

August 4, 1977

I have reached the conclusion neither the State, the Governor nor the Department of State are indispensable parties and, for that matter, even proper parties.

Insofar as the action's proceeding against the individual defendants in their individual capacities, relief sought, if granted, must, of course, be given against them in their representative capacities. Nonetheless, because of possible problems of enforcement which would run against them personally if such were to be required, it seems to me it may be that they should be retained in their individual capacities.

In any event, I do not see how much harm can be done by retaining them in their individual capacities, and I have no motion before me on which I can take action.

I assume that these matters can and will come up before me at some future time on pretrial conference or the like where they may properly be handled. As stated, I do not reach the conclusion there is any necessity for adding any parties at the present time.

Sincerely yours,

/s/

\_\_\_\_\_  
WINSTON E. ARNOW

## Copies to:

James U. Blacksher, Esq.  
Larry T. Menefee, Esq.  
Kent Spriggs, Esq.  
Jack Greenberg, Esq.  
Eric Schnapper, Esq.  
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Charles S. Rhyne Esq.  
William S. Rhyne, Esq.  
Donald A. Carr, Esq.  
Richard I. Lott, Esq.  
Louis F. Ray, Jr., Esq.  
Clerk, U.S. District Court, Pensacola, FL

[CAPTION OMITTED IN PRINTING]

**PRETRIAL STIPULATION**

Pursuant to the second amended order for pretrial conference entered April 13, 1978, the parties jointly submit the following pretrial stipulation:

**A. Basis of Federal Jurisdiction**

This Court has jurisdiction of the subject matter and the parties to these actions pursuant to 28 U.S.C. § 1343. Plaintiffs also assert the Court's jurisdiction pursuant to 28 U.S.C. § 1331.

**B. Concise Statement of the Nature of the Action**

These actions, conditionally certified as class actions, concern the constitutionality and lawfulness of the continued use of at-large elections of members of the Board of County Commissioners of Escambia County, and the School Board of Escambia County in light of alleged dilution, or minimization of black voting strength.

[32] **C. Brief, General Statement  
of Each Party's Case**

(1) for plaintiffs

1. Plaintiffs contend that the at-large election of County Commissioners and School Board members denies plaintiffs and the class of black citizens they represent equal access to the political process leading to nomination and election to said governmental bodies. Plaintiffs contend that, accordingly, the at-large election systems are fundamentally unfair, with respect to black citizens, and violate their rights protected by the first, thirteenth and

fifteenth amendments to the Constitution of the United States; both the Due Process and Equal Protection Clauses of the fourteenth amendment; the Civil Rights Act of 1870, 42 U.S.C. § 1971 (a)(1); the Voting Rights Act of 1965, 42 U.S.C. § 1973; and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

2. Plaintiffs will attempt to prove their constitutional and statutory causes of action according to the elements of proof prescribed in the quartet of recent decisions containing the latest word from the Fifth Circuit concerning dilution of minority voting rights by multimember districts. *Nevett v. Sides*, \_\_\_\_\_ F.2d \_\_\_\_\_ (5th Cir., March 29, 1978); *Bolden v. City of Mobile*, \_\_\_\_\_ F.2d \_\_\_\_\_ (5th Cir., March 29, 1978); *Bull v. City of Shreveport*, \_\_\_\_\_ F.2d \_\_\_\_\_ (5th Cir., March 29, 1978).

3. Accordingly, plaintiffs contend, the evidence will show intentional, invidious racial discrimination by the State of Florida, its officers and subdivisions according to the following alternative standards.

a. The systems of at-large elections in both the primary and general elections, with respect to the County Commission and the School Board, were each designed and have been maintained purposefully and invidiously to discriminate against black voters.

b. Regardless of direct and circumstantial evidence of their specific racially discriminatory intent, the aforesaid at-large election systems carry forward and perpetuate the effects of past intentional devices employed by the State to discriminate against black voters.

c. Intentional racial discrimination is demonstrated in the aforesaid at-large election systems by the presence of an aggregate of the factors set out in *Zimmer v.*

*McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), aff'd sub nom. *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976).

4. The majority opinions *Nevett*, *Bolden* and *Bull*, notwithstanding, plaintiffs contend that the evidence will establish that the aforesaid at-large election systems [33] have the effect of minimizing or cancelling out the voting strength of the black minority in Escambia County and the City of Pensacola, and that, regardless of their intent, these election systems violate the fifteenth amendment and the Civil Rights Act of 1870 and the Voting Rights Act of 1965. See *Nevett v. Sides*, *supra*, (Judge Wisdom concurring).

5. Plaintiffs seek the following relief:

a. A declaratory judgement that the election systems complained of herein violate the constitutional amendments and statutes set out above;

b. An order enjoining the defendants, and each of them, their agents, successors, attorneys and those acting with them and at their direction from holding, supervising, or certifying the results of any election for the Board of County Commissioners of Escambia County and the School Board of Escambia County under the present election systems;

c. An order requiring that the aforesaid local governmental bodies be apportioned into single-member districts so that all members of the County Commission and the School Board will be elected in a manner that avoids debasing, diluting, minimizing or cancelling out the voting strength of black citizens;

d. An award of plaintiffs' attorneys' fees and costs;

e. Such other and further equitable relief as the Court may deem just and proper.

(2) for defendants

Plaintiffs' lawsuit rests solely on the unsupportable constitutional premise that blacks have a federally guaranteed right to representation by blacks.

Defendants have a legitimate governmental interest in an at-large electoral system instituted and maintained for reasons which are wholly non-discriminatory. At-large elections insure that a County Commissioner or School Board member will have a county-wide perspective thereby alleviating the ward-heeling phenomenon that accompanies single-member district election systems. At-large elections afford all voters and interest groups an opportunity to influence the performance of all Commissioners and School Board members. Black citizens of Escambia County have equal access to all facets of the local political processes. There are no restrictions, formal or informal, on black registration, voting, candidacy for office or any other aspect of electoral participation. The support of black voters is actively sought by all candidates for office and is often decisive. There is no evidence of any correlation whatever between the voters' race and their ballot choices in elections that have not involved black [34] candidates. White Escambia County voters have on numerous occasions demonstrated they will cast their ballots for qualified black candidates.

Given these voting patterns, County Commissioners and School Board members must be equally responsive to the interests of black citizens. The record of their performance shows that they are. Indeed, the Escambia County blacks have far more real political power under the pre-

sent at-large electoral structure than they would under the single-member system which plaintiffs ask this Court to establish. Under such a system only one County Commissioner and School Board member would have any substantial black constituents and the rest would have little or no reason to consider black political interests. Any polarization that exists would actually increase or be exacerbated in a predictable four to one vote.

\* \* \* \*

**F. Concise Statement of Facts Which Are Admitted  
and Will Require No Proof at Trial**

1. According to the latest complete United States Census figures (1970), Escambia County has a population of 205,334, of whom 163,014 or 79.4%, were white persons; 40,362 or 19.7%, were black persons. There were then 80,371 registered voters, of whom 67,297 or 83.8% were white and 13,037 or 16.2% were black. There were then 96,517 white persons of voting age, of whom 69.7% were registered to vote, and 19,485 black persons of voting age, of whom 66.9% were registered to vote.

According to the 1960 census, the Black population of Escambia County twenty-one (21) years of age and older was 76,688. There were 9,148 blacks (50.7%) and 53,865 whites (70.2%) registered to vote.

2. The Board of County Commissioners serves as the legislative and governing body of Escambia County. the Commission appoints a County Administrator who is the chief administrative head of the County and who carries out the policies of the Commission and administers all departments of the County government. Prior to adopting a County Administrator's ordinance in 1977, the Commissioners had full authority to administer the day-to-day



operation of county business. All employees within the County's administrative departments are selected and employed by the County Administrator pursuant to regulation of the County Civil Service Board, whose members are appointed by the Governor of Florida. The employment of County department heads, who are not within the Civil Service system, is subject to confirmation by the Commission, however.

3. Since Escambia County has no charter, the Commissioners have traditionally had to act within the guidelines provided by the Florida Legislature in general law and by special or local laws applicable to this County. However, since the 1968 amendments to the Constitution of Florida, and subsequent home rule legislation, the County Commission can now pass ordinances and enter into agreements with other governmental agencies, as necessary for the exercise of its powers.

4. The County Commission is authorized to plan for development, establish zoning and business regulations on their own volition, set the budget for all County agencies, set the County millage, issue bonds for lawful purposes, issue franchises for utilities, and review rates charged for public services. The Commission also approves financial obligations of the County, has charge of all County buildings, appoints various citizen boards, approves plats for subdivisions, provides legal representation for the County, alters County Commission district boundaries upon the recommendation and approval of the Supervisor of Election and provides for County roadbuilding and maintenance. Other powers include hospital and ambulance service, health, fire protection, welfare, recreational and cultural facilities and programs.

5. Members of the Escambia County Commission are elected at-large by the qualified voters of the entire Coun-

ty. Each Commissioner must reside in one of five residency districts. The Commissioners serve for four-year staggered terms, and receive an annual salary of \$20,402.88.

The terms of the Commissioners residing in residency district 2 (Kelson) and 4 (Kenney) will expire in November 1973. The terms of the other three Commissioners will expire in November 1980. There is a majority vote requirement in the primary elections. Candidates run for numbered places.

6. Article VIII, Section 5 of the Constitution of the State of Florida, (1885) ratified in 1900, provided that county commissioners shall be elected by the qualified electors of said county. For some number of years prior to 1954, candidates for County Commission were nominated only by the voters of their several residency districts. In 1954, the Florida Supreme Court held the single-member district nomination process to be violative of the Florida Constitution.

7. Florida law provides for single, County-wide school districts as a part of the constitutionally-mandated "uniform [state] system of free public schools". *The school district of Escambia County is governed by state laws, rules and regulations and minimum standards of the State Board of Education, and its administrative and supervisory agency, the State Department of Education, and policies adopted by the School Board of Escambia County*, which is the local governmental body charged with organizing and controlling the public schools of the School District of Escambia County. Responsibility for the administration of the schools and for the supervision of instruction in the district is vested in the Superintendent of Schools, a separate constitutional officer who, in Escambia County, is elected. The School Board is composed of seven members, all elected at-large by the

qualified voters of the County. Five of the members must reside in one of five residency districts, and two may reside anywhere in the County. School Board members serve for four year staggered terms. The terms of members residing in residency districts 1 (Bell), 3 (Leeper), and 5 (Gindl) will expire in November 1978. The terms of members residing in residency districts 2 (Suarez) and 4 (Mashall) and of at-large members Biasco and Bailey will expire in November 1980.

8. By law, the School Board has qualified final approval of instructional personnel recommended for employment by the Superintendent and of non-instructional personnel recommended for employment by the Superintendent from the Civil Service Service roster. The Board also must approve purchases and payments, adopts the annual budget recommended by the Superintendent, and decides school location and construction questions.

9. The Escambia County school system includes 168 school centers. The system provides general and special education for children from kindergarten through grade 12 plus vocational training and community schools for adults. The 1977-78 enrollment was approximately 47,000 students.

10. Florida law directs that the Board establish a School Advisory Committee broadly representative of the community served by the school for each school in the district and composed of teachers, students, parents, and other citizens. Each Committee assists the principal in the preparation of his annual school report on the status of education. Members of the School Advisory Committees are appointed by the principals of the various schools pursuant to law.

11. The Supervisor of Elections is a constitutional office, elected for a four-year term. He is in charge of registration of voters, qualification of candidates for local offices, appointment of poll workers, supervision of voting, issuance of absentee ballots, canvassing election results together with the chairman of the County Commission and with a County judge, and certification of elections.

12. A permanent registration roll is kept current by the Supervisor of Elections, who mails renewal cards in the fall preceding general elections to each elector who has not voted in the past four years. Names of those failing to return their renewal cards are withdrawn from the registration records; those having voted within the four years are carried on the rolls. Names of persons removed from the registration rolls can be reinstated anytime the registration books are open. Members of the armed forces and members of their families, citizens of the United States who are permanent residents of the State of Florida who are temporarily residing outside of the County, the physically disabled, and residents of the State who are unable to register in person may register by mail when the books are open by making application for absentee registration. The law requires that registered voters notify the Supervisor of changes of address and that they must re-register if they change their names or wish to change their party affiliation. The registration books close 30 days before the first primary election.

13. The racial identification of voters on the registration rolls is set forth on the voters' registration identification cards on file in the Supervisor of Election's office, pursuant to Section 97,071, Florida Statutes.

14. For election purposes, Escambia County is divided

into precincts by the County Commission upon the recommendation and approval of the Supervisor of Elections. There are now 96 precincts in Escambia County. A citizen votes in the precinct in which he or she resides. The County Commission and School Board elections are partisan; that is, candidates are nominated through primary elections. In order to vote in the primary, a citizen must register as a Democrat or Republican and must vote his or her stated party preference. Independents may not vote in party primaries. Parties having a number of registered voters equal to at least 5% of the total number of registered voters in the state on January 1 of a general election year are given major party status and are required to utilize the primary election process to nominate their candidates for the general election. Voters are not required to follow any party lines in a general election.

15. A qualified candidate may offer himself in a primary election, provided that he pays the specified fee and takes an oath of loyalty to the party. The qualification fee for the primary election is 3% of the annual salary of the office sought plus another two percent for the party executive committee. A candidate who cannot pay the filing fee without imposing an undue burden on his or her personal resources or on resources otherwise available to the candidate, may have his or her name placed on the ballot by means of a petition signed by 3% of the registered electors of the party in the County. A majority of the votes cast is required for primary nomination. If there is no majority, the two leading candidates run in a second primary, or runoff, three weeks later.

16. The major parties are governed by the state and county executive committees, elected by the registered voters of the respective bodies. As of 1977, there were 84,690 Democrats, 13,948 Republicans, and 3,307 others

registered in Escambia County. Each party executive committee is composed of one man and one woman from each precinct, except in precincts of over 1,000, where two men and two women serve. The present committees were elected in 1976 for four-year terms.

17. Since 1945 there have been no racially designated legal restrictions on the ability of black citizens of Escambia County to register, vote or campaign for the County Commission or School Board.

18. There are no formal candidate "slating" organizations involved in County Commission or School Board elections. There have been various, less institutionalized, "endorsing" groups which have sought support for various candidates for the County Commission and School Board. These groups have endorsed both black and white candidates.

19. The filing fee for candidates for primary elections for the County Commission and the School Board is 5% of the annual salary. The annual salary of County Commissioners in Escambia County is \$20,402.88. For purposes of computing the filing fee, the annual salary of School Board members is \$2400. Candidates for whom the filing fee is an undue financial burden may qualify by obtaining a petition from 3% of the registered voters of the party by which the candidate seeks nomination. A 5% petition requirement existed prior to 1978, Section 99.092 and 99.095, Florida Statutes.

20. On four occasions in history (all in the last ten years) a black candidate has run for Escambia County Commission. No black has ever been elected. John Reed, a black candidate in 1966, received 8,225 votes, compared with 14,592 for Cobb, 9,017 for Fredrickson, and 4,298 for Ward, the white opponents. Elmer Jenkins, a black

candidate in 1968, received 9,704 votes in the first primary, compared with 19,168 for Armour, 8,159 for Gindl, and 4,901 for Whatley, the white opponents. In the primary runoff, Jenkins received 14,636 votes and Armour 25,408. Nathaniel Dedmond, a black candidate in 1970, received 7,373 votes, compared with 19,700 for Kenney and 8,658 for Davis, the white opponents in the democratic primary. John Reed ran again in 1970 and received 5,240, compared with 11,840 for Barnes, 9,557 for Cobb, and 9,037 for Kelson, the white opponents.

21. On five occasions in history (all in the last seven years) a black candidate has run for the Escambia County School Board. No black has ever been elected. Otha Leverette, a black candidate in 1970, had no opposition in the Democratic primary. He received 21,065 votes in the general election, compared with 22,523 for Republican Richard Leeper, the white opponent. Elmer Jenkins, a black candidate in 1974, received 12,275 votes, compared with 10,933 for Sanders, the white opponent, in the only primary. In the general election, Jenkins received 21,098 votes, compared with 22,547 for incumbent Leeper. Eddie Stallworth, a black candidate in 1974, ran as a Republican in the general election. He received 9,673 votes, compared with 32,612 for Bell, his white opponent. Donald Spence, a black candidate in 1976, received 15,956 votes in the first primary, compared with 10,079 for Marshall and 10,717 for Smith, who are both white. He lost to Marshall in the runoff 29,106 to 19,176. Elmer Jenkins sought election again in 1976 and received 12,257 votes in the first primary, compared with 9,765 for Bailey, 5,244 for Forester, 1,362 for King, 5,606 for Lee, 5,071 for MacGill and 1,173 for Southard, all white candidates. He lost to Bailey in the runoff 26,786 to 20,526.



22. With respect to the responsiveness of County government to the needs of black citizens, Plaintiffs do not plan to contest the delivery of services in the following areas: water; sewers; traffic control; fire hydrants; mosquito control; library services; ambulance service; garbage collection and disposal; drainage planing; housing and corrections.

23. With respect to School Board responsiveness, Plaintiffs have no plans to contest the Board's failure to comply with the Court's orders in *Augustus v. School Board of Escambia County* since entry of the terminal desegregation order in April 1969. However, Plaintiffs will contend that certain legal positions taken by the Board in *Augustus* have failed to reflect the interests of the majority of black citizens. In addition, Plaintiffs will only challenge the Board's record of appointments of a non-employment type to advisory boards, committees and councils and the Board's alleged racial application of suspension and expulsion policies.



## [CAPTION OMITTED IN PRINTING]

## PRE-TRIAL ORDER

1. This is the pre-trial order that is entered in both of these cases. All of the matters included in the pre-trial stipulations in these two cases are made a part of the order insofar as it pertains to such case, except to the extent such may be altered or amended at the pre-trial conference.

2. At pre-trial hearing the court concludes that these cases will be consolidated for trial with, however, there being reserved the right of any party during the trial, or the court on its own motion, to sever for trial should it appear during the course of the trial that severance of the cases for completion would be advisable.

3. At pre-trial conference there is some question raised whether the matter contained in the second paragraph under paragraph F5 of the pre-trial stipulation is correct. The question presented is what is the exact situation respecting the majority or plurality vote in runoff elections insofar as the general election is concerned, and with this being limited to the School Board and County Commission. Prior to trial the parties will check out the law and by stipulation to be made a part of the record in this case set forth with exactness what the situation is respecting such.

4. At pre-trial conference it was agreed that as a matter of law those seeking election to the School Board in Escambia County, Florida, qualify in and run for election from a numbered position.

5. At pre-trial conference it is stipulated and agreed between the parties as follows: that in elections in both citywide and countywide races since 1955, with a few purported exceptions, there has been no racially polarized voting in elections in which all candidates were white.

6. At pre-trial conference it was agreed between all parties that where they have stipulated there were no formal candidate "slating" organizations involved in elections they mean by that that there has been no regularly constituted organization that regularly presented a slate of candidates in an election such as might be done by a political party — that neither the Democratic nor the Republican party in this county in any of these elections does, either in city council elections or in School Board or County Commission elections, insofar as primaries are concerned, come forward with a slate of candidates, and that in the primary elections the parties do not support or endorse any candidate, although both parties in the general election endorse whoever their nominees have been as a result of the primaries.

7. It is stipulated at the pre-trial conference as follows: a fairly constructed single-member district system for the election of Escambia County Commissioners and Escambia County School Board members would produce one black majority County Commission and School Board district each out of five.

8. At pre-trial conference defendants' objection to plaintiffs' attempt to base a cause of action on the 1870 Civil Rights Act because it was not pleaded in the complaint is overruled on the ground. The fact it was not pleaded will not keep them from pursuing it for whatever it is worth here.

9. At pre-trial conference the question of dismissal of the parties defendant in their individual capacities was presented to the court on motion. It was made clear at the pre-trial conference that plaintiffs do not seek under the complaint filed in this case and will not seek any judgment for attorney's fees or court costs against these parties in

their individual capacities and the court agrees that in the pleadings presented to the court there would be no basis for any such relief against them individually.

The court does conclude that they should be left in for purposes of injunctive relief and for purposes of enforcement of any injunctive decree entered, if such is entered. For that reason such motion is denied.

10. Prior to trial, in the light of possible changes in defendants before the court in the representative capacities the parties will jointly agree on what changes have been made and under the rules come before this court and substitute those who now should be here in such representative capacities.

Inasmuch as these defendants are left in individually the substitution will take out of this case both individually and in their representative capacity those who are no longer in office and will substitute those now in office in their place individually and in such representative capacity.

11. Prior to trial the parties will endeavor to agree on such newspaper clippings or items that plaintiffs wish to present in evidence, and to the extent they are unable to agree, will each provide the court with memorandum of law going into the admissibility at the trial of this case, such to be done no later than May 12, 1978.

12. Prior to trial the parties will endeavor to stipulate on the events occurring in the constitutional convention now convened respecting the question of single districting and at-large districting and the actions of the commission in connection therewith, to avoid the necessity of proof thereof at trial.

13. At the trial of this case qualification of experts will be done by the parties in this way: each counsel present-

ing an expert will have a list of that witness's qualifications as an expert and will read them to the expert and will ask the expert to state whether or not as read they are correct in order to save time in qualifying him as an expert.

14. The parties at the pre-trial conference have agreed with each other and before the court that respecting the exhibits of the respective parties no objection on authenticity or foundation proof requirements will be made to any exhibit but the parties have reserved the right to object to such exhibits on other grounds. Prior to trial each party will go over the exhibits of the other parties and in consultation, if necessary, will endeavor to agree to the full extent possible on such exhibits that will be coming into evidence without objection of any kind. The foregoing ruling does not mean that regression analyses will be placed in evidence without being established for such purpose by testimony of the expert who is presenting them.

15. Respecting the regression analyses, the defendants prior to trial will go over them to see whether or not they have objections based on the record showing that they are not valid statistical analyses of whatever is involved in them, with the viewpoint of trying to save time at trial, if possible.

16. Plaintiffs are granted leave to take the depositions of defendants' three experts whom they have recently announced they propose to call at trial, in advance of trial.

17. There is added to the list of witnesses for the city the name of Steve Garman, Westminister, Colorado.

18. Exhibits 26, 27 and 32, at the request of counsel for the defendant city, are stricken from the pre-trial stipulation.

19. Respecting all exhibits, the parties will endeavor to agree before trial which ones are coming in without objection and, to the extent that they are unable to agree and there is an evidentiary problem involved, will advise the court and each other with memorandum concerning such no later than May 12, 1978.

20. There is added to defendant County Commission's proposed list of exhibits a copy of the Escambia County Civil Service Board Rules and Regulations.

21. This case is set for trial commencing at 9:00 o'clock A.M. On Monday, May 15, 1978.

DONE AND ORDERED this 12 day of May, 1978.

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WINSTON E. ARNOW  
Chief Judge  
United States District Court

**[CAPTION OMITTED IN PRINTING]****NOTICE OF PROPOSED COUNTY CHARTER**

NOTICE IS HEREBY GIVEN of a proposal by the Escambia County Charter Commission, created pursuant to Chapter 78-505, Laws of Florida, for a charter form of government for Escambia County. A certified copy of the proposed charter, as filed in the office of the Comptroller of Escambia County, is attached as an appendix hereto. In accordance with the authority granted to it by the aforesaid law, the Escambia County Charter Commission has scheduled for November 6, 1979, a referendum election at which time the electors of Escambia County would approve or disapprove the proposed charter.

All conditions precedent to the Court's decision to approve or disapprove Defendant Escambia County's remedial plan for electing county commissioners have now been met. This Court's judgment and memorandum decision entered on July 10, 1978, directed Defendant Escambia County to submit within forty-five (45) days a remedial plan for electing county commissioners. Defendant Escambia County submitted a plan to the Court on August 24, 1978. However, on September 21, 1978, Defendant Escambia County adopted an ordinance substantially revising the plan theretofore submitted to the Court. After considering the memorandum of counsel and discussing the matter of the remedial plan at a hearing on September 25, 1978, the Court entered a memorandum on October 4, 1978, directing counsel for the parties to confer with representatives of the Escambia County Charter Commission (which was created and authorized to draft a proposed charter for the government of Escambia County which charter might provide for an alternative means of electing county commissioners) to ascertain whether or not

the Charter Commission would be willing to submit its plan for electing county commissioners for the Court's review. By letter dated October 10, 1978, counsel for Defendant Escambia County advised the Court that the Charter Commission had declined the Court's invitation and further advised the Court that at that time February 1979 was the best available estimate for the time for completion of the draft of the proposed County Charter and that a referendum election on the charter question was expected to be scheduled for May 1979. No further consideration of the matter has been given until present. The final draft of the proposed County Charter was completed on June 18, 1979, and filed in the Office of the Clerk to the Board of County Commissioners on June 29, 1979. The Charter Commission has determined that November 6, 1979, is the date upon which a referendum election should be held so that the voters may approve or disapprove of the charter.

The plan for electing county commissioners in the proposed charter is substantially similar to the ordinance adopted on September 21, 1978, by Defendant Escambia County. Both plans provide for a seven member Board of County Commissioners with five members to be elected from single-member districts and two members to be elected by the voters of the county at-large. However, while the plan heretofore submitted to the Court by Defendant Escambia County has fixed the boundaries of contiguous and compact districts conforming as nearly as possible with the one man-one vote requirement, such task under the Charter Government would be undertaken by a Reapportionment Commission.

However, Defendant Escambia County wishes to emphasize that neither the proposal of a county charter nor

any of its substantive terms has any bearing on the validity of the legislative remedial plan of Defendant Escambia County heretofore submitted to the Court. For the reasons set forth in Defendants' September 15, 1978, memorandum, the Court should approve and accept Defendant Escambia County's remedial plan. The proposal of a county charter, regardless of its form or contents, is merely a means of presenting to the electors of the County the option of adopting an alternative form of county government. The charter proposal contains many provisions which substantively affect and change county government. Any such charter may or may not propose to revise the procedure for electing county commissioners provided for in the general law of Florida. The mere proposal of any such charter does not limit the legislative authority of the Board of County Commissioners theretofore exercised and should not be construed by the Court to have any force or effect of law whatsoever until the charter proposal is approved by vote of the electors of the County.

In any event, because the charter proposal for electing county commissioners is so similar to the plan heretofore adopted by Defendant Escambia County and submitted to the Court, nothing would be gained by delaying consideration of Defendant Escambia County's remedial plan until after a referendum on the proposed charter.

The time is now ripe for the Court to approve or disapprove the remedial plan heretofore adopted by ordinance by Defendant Escambia County and filed with the Court. Should there be an appeal from the Court's decision, it would be in the interest of judicial economy that the matter be decided promptly so that any appeal therefrom might be consolidated and considered with the pending appeal on the merits of the Court's July 10, 1978, decision on Plaintiffs' dilution claim. This would be in the best in-



terests of Plaintiffs, Defendants and the public alike, all of whom are anxious to determine finally the form of government for the future of Escambia County.

Respectfully submitted,  
/s/ John W. Fleming

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*Attorneys for Defendant Escambia County*

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1000 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036

*Attorneys for Defendant Escambia County*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered by regular U.S. Mail to J.U. Blacksher, Esquire and Larry T. Menefee, Esquire of Crawford, Blacksher, Figures & Brown, 1407 Davis Avenue, Mobile, Alabama 36603, Kent Spriggs, Esquire, 324 West College Avenue, Tallahassee, Florida 32301, Jack Greenberg, Esquire and Eric Schnapper, Esquire, Suite 2030, 10 Columbia Circle, New York, New York 10019, W. Edward Still, Esquire, 601 Title Building, Birmingham, Alabama 35203, Attorneys for Plaintiffs, and Don J. Caton, Esquire Second Floor, City Hall, Pensacola, Florida, Attorney for Defendant City of Pensacola, and Louis F. Ray, Jr., Esquire, 226 South Palafox Street, Pensacola, Florida 32501, this 5th day of July, 1979.

John W. Fleming

/s/ John W. Fleming

THE PROPOSED CHARTER FOR THE HOME  
RULE OF ESCAMBIA COUNTY, FLORIDA Approved  
June 18, 1979.

ARTICLE I  
CREATION OF THE GOVERNMENT

SEC. 101 PURPOSE

We, the people of Escambia County, in order to create a more responsible and efficient local government, do ordain and establish this Charter of Escambia County, Florida as our Home Rule Charter and form of government, in accordance with the Constitution and laws of the State of Florida.

SEC. 102 PROHIBITION OF CONSOLIDATION

Notwithstanding any provision herein, this Charter shall not be deemed to authorize or permit the consolidation of the government of Escambia County and any municipality therein, and the County shall not consolidate its government with any municipality therein, except pursuant to an election held in accordance with the Constitution of the State of Florida, and under a special law specifically providing for such an election, which shall provide that no consolidation shall be effected unless the qualified County electors residing in areas within and without any municipality concerned vote in the election and a majority of such voters in both areas shall vote in favor of consolidation.

SEC. 103 BODY CORPORATE AND POLITIC

Escambia County shall be a body corporate and politic and as such shall have all rights and powers of local self-government which are now, or hereinafter may be, provided by the Constitution and Laws of Florida and this Charter.

## SEC. 104 NAME AND BOUNDARIES

The corporate name of this County government shall be "Escambia County," hereinafter referred to as the "County," and shall be so designated in all actions and proceedings concerning its rights, powers, properties, and duties. The County seat shall be in Pensacola, Florida, and the boundaries of the County shall be those presently designated by Law.

## ARTICLE II POWERS AND DUTIES OF THE COUNTY

### SEC. 201 GENERAL POWERS OF THE COUNTY

The County shall have all the general powers of local self-government not inconsistent with general law, the Constitution of Florida, and this Charter.

### SEC. 202 SPECIAL POWERS

The County shall have all authority, powers, and duties heretofore granted by legislative special acts, general laws of local application, or ordinances, as may be in force at the effective date of this Charter and which are not inconsistent with this Charter.

### SEC. 203 SECURITY OF THE CITIZEN'S RIGHTS

In order to secure to the citizens of the County protection against abuses and encroachments, the County shall use its powers to provide for all citizens:

(1) *Just and Equitable Taxation:* The County shall prevent the imposition of any tax within the County in excess of the limitations imposed by the Constitution or Laws of the State of Florida;

(2) *Proper Use of Public Property:* The County shall prevent the use of public property or taxing power for the benefit of private individuals, partnerships, or corporations in violation of the restrictions imposed by the Constitution or the Laws of the State of Florida;

(4) *Full Disclosure of Public Records and Proceedings:* All meetings and proceedings established by the County shall be open to the public as provided by the Laws of Florida. All official County documents and reports, except those which have been specifically prepared for use in court proceedings, criminal law enforcement, those which would violate a person's right of privacy, or which are working papers or otherwise merely supportive of a final document or report, shall be open for public inspection, and the agency or official having custody and control of such public records shall, upon request, supply certified copies of the records requested for a reasonable fee as established by ordinance;

(a) *Protection of Human Rights:* The County shall establish such provisions, pursuant to state and federal law, as may be required for protection of citizen rights from discrimination based upon religion, political affiliation, race, color, age, sex, or national origin, and by providing and insuring equal rights and opportunities for all citizens of Escambia County.

## SEC. 204 DIVISION OF POWERS

This Charter hereby established separation between the legislative and administrative functions of this government. The establishment and adoption of policy shall be legislative and the responsibility of the Board of County Commissioners; the execution of that policy shall be administrative and the responsibility of the County Administrator. Elected County Charter Officers shall also

have such administrative functions and responsibilities as may be provided by general law, not inconsistent with this Charter. Judicial functions shall be as provided by general law.

#### SEC. 205 CONSTRUCTION

The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific powers otherwise granted or authorized in this Charter. It is the intent of this article to grant to the County full power and authority to exercise all governmental powers necessary for the effective operation and conduct of the affairs of the Charter Government. All descriptive nouns and pronouns within this Charter shall be construed as singular or plural, or masculine or feminine, as the context may require the construction of positions, offices, and the other provisions herein.

#### SEC. 206 EXERCISE OF POWERS

All powers of the County shall be exercised and executed as provided by this Charter or, if the Charter makes no provisions, as provided by general law.

#### SEC. 207 OATH

All elected or appointed officers, board members, or persons serving in positions specified in this Charter shall, as a qualifying condition precedent to serving, swear or affirm the oath of public officers set out in the Constitution of the State of Florida, said oath to be filed with the Clerk of the Circuit Court.

### ARTICLE III LEGISLATIVE BRANCH – COUNTY COMMISSION

#### SEC. 301 COMPOSITION – COMMISSION

Except as otherwise provided in this Charter, all powers of the County shall be vested in a Board of County Commissioners of seven (7) elected members. The County shall be divided into five (5) districts. One (1) Commission member shall be elected from each District by the electors of that District, and two (2) shall be elected by the electors of the County at large; one (1) Commissioner-at-large shall be designated as Commissioner-at-Large I, and the other Commissioner-at-large shall be designated as Commissioner-at-Large II.

#### SEC. 302 TERMS OF OFFICE

All County Commissioners shall be elected for staggered terms of four (4) years, except as provided for in this section. Upon adoption of this Charter, the five (5) district seats created by this Charter shall be filled at the next general election by electing a Commissioner from each of the even numbered districts for four (4) years, a Commissioner from each of the odd numbered districts for two (2) years, Commissioner-at Large I for a term of (2) years, and Commissioner-at-Large II for a term of four (4) years. Commissioners elected under this Charter shall be limited to two (2) consecutive terms. The district boundaries and numbers in effect on the date this Charter is adopted shall be used in the aforementioned election.

#### SEC. 303 CONTINUANCE OF COMMISSIONERS

Commission members in office on the effective date of this Charter shall continue in office as a Commissioner of the district from which each qualified until the election and qualification of their successors.

## SEC. 304 QUALIFICATIONS

(1) All County Commissioners shall be qualified electors of the County and shall have been a resident of the County for at least one (1) year immediately preceding the date on which they qualify to run for office; District Commissioners shall have been a bona fide qualified voter within the district from which they qualify to run for office for at least six (6) months prior to the date on which they qualify to run for office. Any Commissioner who changes residence from the County, and any Commissioner elected with a district who changes residence from the district from which the Commissioner was elected, shall be deemed to have vacated his office.

(2) If a Commissioner ceases to be a qualified elector of the County, or is convicted of a felony or a crime involving misfeasance or malfeasance in office, he shall be deemed to have vacated his office.

## SEC. 305 QUORUM; VOTING

Four (4) Commission members shall constitute a quorum to do business, but a lesser number may adjourn from time to time. The affirmative vote of not less than four (4) Commission members shall be necessary to pass or adopt all matters under consideration by the Commission, except where a greater number is required under this Charter. A vote to adjourn may be adopted by a majority of the members present. No member shall be excused from voting, except on matters involving a conflict of interest. Voting shall be by roll call and the "yeas" and "nays" shall be recorded.



## SEC. 306 MEETINGS OF COMMISSION

(1) The Commission shall meet regularly at least twice in every month at such time and place as the Commission may prescribe by rule, but at least one meeting each month shall be held in the evening hours.

(2) Special meetings shall be called by the Clerk of the Commission upon request of the Chairman of the Commission or two (2) members of the Commission. Written notice thereof shall be given and shall state the subject or subjects to be considered at the special meeting, and no other subject shall be considered. Special meetings shall require not less than twenty-four (24) hours actual notice to each Commissioner, except in an emergency.

(3) Meetings of the Commission and of the committees thereof shall be open to the public, and the rules of the Commission shall insure that the citizens of the County shall have a reasonable opportunity to appear and to be heard.

(4) An agenda for each meeting shall be prepared and made available at least twenty-four (24) hours prior to the meeting, and non-agenda items shall be acted upon only in an emergency situation which requires action prior to the next regular meeting.

## SEC. 307 POWERS REGARDING ELECTIONS, MEMBERS, RULES AND BUSINESS

(1) The Commission may determine the election and qualifications of its members in the event there is uncertainty relating thereto and, in such cases, shall have power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the Commission in any case shall be subject to judicial review.

(2) The Commission shall determine its own rules and order of business and shall provide for keeping a written record of proceedings.

#### **SEC. 308 LEGISLATIVE PROCEDURES – EFFECTIVE DATES OF ORDINANCES AND REGULATIONS: EMERGENCY MEASURES**

All ordinances passed by the Commission, in the manner provided by general law and this Charter, shall be filed with the Department of State within ten (10) days after enactment and shall take effect upon receipt of official acknowledgment from that office; provided, however, that any ordinance may prescribe a later effective date. Emergency enactments shall follow the procedures as set forth in general law.

#### **SEC. 309 RIGHTS OF VARIOUS OFFICERS TO PARTICIPATE IN COMMISSION DISCUSSIONS**

Elected County Charter officers, the County Administrator, and such other County employees as may be designated by majority vote of the Commission, shall be entitled to appear before the Commission in all matters relating to their respective offices and departments.

#### **SEC. 310 COMPENSATION – COMMISSION**

(1) The salary of each member of the Board of County Commissioners shall be twelve thousand (\$12,000) per year, and said salary shall constitute full compensation for all services and in-county expenses. Total out-of-county travel expenses, as provided by law, shall be limited to not more than fifteen percent (15%) of the total amount budgeted for Commissioners' salaries; provided, however, that all such out-of-county travel shall have been approved by the Board of County Commissioners prior to incurring the expense. The compensation of the Commissioners may

be changed from time to time by the affirmative vote of five (5) members of the Board of County Commissioners, by ordinance, to become effective on the first day of the first fiscal year following the next general election after the change in compensation has been adopted by the Commission, provided, however, such change in compensation must be approved by a majority of the voters at the said general election. No ordinance changing the compensation of the Board of County Commissioners shall be enacted prior to January 1, 1982.

(2) Commission members elected prior to the effective date of this Charter shall continue to receive the salary established by general law until November 19, 1980.

#### **SEC. 311 RECORDING, PRINTING, AND CODIFICATION**

The Commission shall provide for the authentication and recording in full, in properly indexed books kept for the purpose, of all minutes of Commission meeting, committee meetings, all ordinances, and all resolutions adopted by the Commission and the same shall, at all times, be a public record. The Commission shall further maintain a codification of all ordinances, and such codification shall be published and made available for distribution on a continuing basis at prices consistent with general law.

#### **SEC. 312 POWERS AND DUTIES OF THE COMMISSION**

To the extent not inconsistent with general law, or this Charter, the legislative responsibilities and powers of Escambia County, Florida shall be assigned to, and vested in, the Board of County Commissioners.

(1) The Board shall have the duty to:

(a) Prepare and enforce long-range comprehensive plans for governance of the County;

(b) Require that the operating budget for the succeeding fiscal year of every Elected County Charter Officer, every Department and every Agency receiving County funds be submitted annually or at such times as the Board may direct.

(c) Insure that all daily operations of the various divisions of County government are carried out by the respective departments or divisions on an equitable Countywide basis, under the general supervision of the County Administrator and through the proper administrative chain of command. Any and all requests, demands or complaints received by the Commissioners regarding County services or operations shall be forwarded by the County Administrator for appropriate action.

(d) Insure that a unified budget is adopted by the County as provided by general law and insure that no expenditures or contracts for expenditures in any fiscal year in excess of each fund's budgets are made; those members of the Board voting for and contracting for such amounts in excess of the budget, or to pay an illegal charge against the County, or to pay any claim against the County not authorized by law or County ordinance shall be liable for such sums and shall be subject to the sanctions, fines or criminal penalties as provided by general law.

(e) Act as the "public employer" in connection with any County employee, other than District School Board employees, for collective bargaining purposes.

(f) Require that public funds are used only for public purposes, and if any such funds should be, pursuant to proper authority, provided to non-profit private

entities or organizations, then such entities or organizations must have a clearly defined public purpose; some measure of control must be granted to and retained by the County, regular reports and accountings shall be provided to the County, and the funds so received must be applied for and inure to the benefit of the citizens of the County.

(g) Adopt, by ordinance, an appropriate non-discriminatory bidding procedure for all purchases and leases of goods and services by the County, waivable only for specified purposes, with reasonable and thorough guidelines for specifications and other conditions designed to promote efficient and economical County services and operations.

(h) Appoint a County Administrator.

(i) Support the Civil Service system as directed in Article X of this Charter.

(2) The Board of County Commissioners shall have the power to:

(a) Advise and consent to all appointments made by the County Administrator for which Board confirmation is specified.

(b) Adopt or enact, in accordance with the procedures provided by general law and this Charter, such ordinances and resolutions as the Board of County Commissioners deems necessary or proper for the best interests of the County and its inhabitants.

(c) Provide for the prosecution and defense of legal causes in behalf of the County or State and retain counsel and set their compensation.

(d) Provide and maintain County buildings for public purposes.

(e) Provide for fire and police protection, disaster preparation and relief, and civil defense.

(f) Provide for hospitals, nursing homes, ambulance service, and health and welfare programs.

(g) Provide for parks, preserves, playgrounds, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.

(h) Establish, coordinate, and enforce such business regulations as necessary for the protection of the public.

(i) Adopt and enforce building, housing, and related technical codes and regulations.

(j) Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, water pollution control, and navigation and drainage, and cooperate with governmental agencies and private enterprises in the development and operation of such programs.

(k) Provide for and regulate waste and sewage collection and disposal, water supply, and conservation programs.

(l) Provide for and operate air, water, rail, and bus terminals, port facilities, and public transportation systems.

(m) Provide for and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities; eliminate grade crossings; provide and regulate parking facilities; and develop and enforce plans for the control of traffic and parking.

(n) License and regulate taxis, jitneys, limousines

for hire, rental cars, and other passenger vehicles for hire operating in the unincorporated areas of the County.

(o) Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the County pursuant to general law.

(p) Enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.

(q) Levy and collect taxes, to the extent permitted by general law, both for County purposes and for the providing of municipal services within any municipal service taxing unit; levy and collect special assessments; borrow and expend money, but only to the extent authorized under this Charter; issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such a manner, and subject to such limitations, as may be provided by the Constitution and the Laws of Florida and this Charter. The County shall not give, lend, use or apply its credit or taxing power to aid any person, association, partnership, corporation, or other private organization except as provided by general law; nor shall ad valorem tax revenues or the full faith and credit of the County be pledged or given to secure bonds, certificates of indebtedness, or other evidences of indebtedness, that mature more than twelve (12) months after issuance, without approval by vote of the electors of the County.

(r) Employ an independent accounting firm to audit the funds, accounts, and financial records of the County or any of its departments, agencies, and govern-



mental subdivisions. Not less than five (5) copies of each complete audit report, with accompanying documents, shall be filed with the County Comptroller and maintained there for public inspection.

(s) Adopt and amend, in accordance with Section 704 of this Charter, from time to time, the County's Administrative Code after reasonable public notice and hearings.

(t) Appoint a County Attorney, who shall be a qualified attorney admitted to practice law in Florida, and such assistants as may be required, and fix the compensation to be paid thereto. This compensation shall be limited to salary and, in the discretion of the Board, such other employee benefits as may be received by the other County employees.

(u) the Board of County Commissioners shall have the full power to create, alter or abolish Special Districts and Municipal Service Units to the full extent granted by the Constitution and the Laws of Florida.

(w) Perform any other acts not inconsistent with the Constitution and the Laws of Florida or with this Charter which are in the common interests of the people of the County, and exercise all powers and privileges not specifically prohibited by law.

#### **SEC. 313 ELECTION, POWERS AND DUTIES OF THE CHAIRMAN AND CHAIRMAN PRO-TEM OF THE BOARD OF COUNTY COMMISSIONERS**

(1) The Board of County Commissioners shall elect from among its members by majority vote a Chairman and a Chairman Pro-Tem. The Chairman and the Chairman Pro-Tem shall be elected prior to January 1 of each



year and shall take office at the first meeting in January of each year.

(2) The Chairman, in addition to the powers and duties provided elsewhere in this Charter, shall have the specific powers and duties to:

(a) Serve as the legislative leader and presiding officer of the Board of County Commissioners.

(b) Present annually a "State of the County" message, setting forth programs and recommendations to the people of Escambia County;

(c) Nominate, subject to confirmation by a majority vote of the Board of County Commissioners, members of all appointed County boards, commissions, and advisory groups;

(d) Call regular and special meetings of the Board of County Commissioners; and

(e) Serve as the official representative and ceremonial dignitary for the government of Escambia County.

(3) In the absence of the Chairman, the Chairman-Pro-Tem shall perform such duties above as are required.

#### **SEC. 314 APPORTIONMENT AND REAPPORTIONMENT**

The County shall be divided into five (5) districts of contiguous territory as nearly equal in population as practicable. In the first odd-numbered year after each decennial census, and at such other times as reapportionment may be required, the County's districts shall be reapportioned in accordance with general law in the following manner:

(1) A Reapportionment Commission shall be established to prepare the reapportionment plan for the County. The Commission shall consist of seven (7) electors, none of whom may be elected public or party officers or employees of the State or County. Prior to December 1 of each year ending in 0, and at such other times as reapportionment may be required, the Chairman of the Board of County Commissioners, the Chief Judge of the Circuit Court of the judicial circuit for the County, and the County Supervisor of Elections shall each nominate two (2) persons on the Commission, and these six (6) persons shall be confirmed and appointed as members of the Reapportionment Commission by the Board of County Commissioners at the Board's next regularly scheduled meeting. Within thirty (30) days after the Board has so acted, the six (6) Commissioners so appointed shall select by affirmative vote of at least four (4) Commissioners, a seventh (7th) Commissioner who shall serve as Chairman of the Commission. Failure to select the seventh (7th) Commissioner within the time prescribed shall constitute an impasse which shall automatically discharge the Commission, and a new Commission shall then be appointed in the same manner as the original Commission. Any subsequent vacancy on the Commission shall be filled by majority vote of the remaining members of the Reapportionment Commission.

(2) The Board of County Commissioners shall appropriate funds to enable the Commission to carry out its duties, and shall provide clerical assistance as needed.

(3) The Reapportionment Commission shall prepare a reapportionment plan that is equitable to all electors of the County. In preparing the plan, the Commission shall not consider the political affiliations of registered voters or previous election results for the purpose of favoring any

political party, incumbent elected official, or any other person or group, nor shall the Commission establish the district boundaries for purpose of diluting the voting strength of any language or racial minority group.

(4) The reapportionment plan as prepared by the Reapportionment Commission shall be presented to the Board of County Commissioners by November 1 of the first odd-numbered year after each decennial census, and at such other times as reapportionment may be required, and such plan shall be adopted in the manner prescribed by general law at least seven (7) months prior to the date of the first county election scheduled to be held thereunder. The reapportionment Commission shall act as advisor to the Board of County Commissioners until such time as the plan has been adopted at which time it shall be deemed discharged.

(5) If the method of electing County Commissioners set forth in Section 301 of this Charter should be judicially declared unlawful, the Board of County Commissioners, after exhausting all reasonable means of upholding and defending the Charter, shall adopt, by ordinance, a remedial plan for electing the County Commissioners, with the district boundaries to be fixed by the Reapportionment Commission in accordance with this section.

#### ARTICLE IV ADMINISTRATIVE BRANCH – COUNTY MANAGEMENT

##### SEC. 401 COUNTY ADMINISTRATOR

There shall be a County Administrator for Escambia County.

**SEC. 401.1 APPOINTMENT, REMOVAL AND SALARY**

The Board of County Commissioners shall appoint a County Administrator who shall be the administrative head of the County government and shall be responsible for the efficient administration of all County departments. He may be the head of a department or departments as the Board of County Commissioners may, by resolution, provide. Appointment to the position of County Administrator shall be made only after applicants for the position have been solicited on a national basis with appropriate advertising over a reasonable period of time. He shall be chosen on the basis of his experience, education, executive ability and administrative qualifications. He may or may not be a resident of the County or the State of Florida at the time of his appointment; provided, however, he shall within sixty (60) days after appointment establish residence within Escambia County. The County Administrator shall be appointed by the affirmative vote of not less than five (5) members of the Board of County Commissioners. He may be removed upon reasonable notice and after a hearing, if such is requested, at any time by an affirmative vote of four (4) or more members of the Board of County Commissioners. He shall receive such salary as may be fixed by the Board of County Commissioners. His compensation shall be limited to the salary and, at the discretion of the Board of County Commissioners, such other employee benefits as may be received by other County employees. In the event of his removal without cause he may be granted not more than three (3) months' termination pay.

## **SEC. 401.2 POWERS AND DUTIES OF THE COUNTY ADMINISTRATOR**

(1) The County Administrator shall be the Chief Administrative Officer of the County, and he shall be responsible to the Board of County Commissioners as a whole for the proper administration of the affairs of the County, except as otherwise provided by the Constitution and the Laws of Florida, or by this Charter. He shall also serve as the County's budget officer.

(2) It is the intent of this Charter to grant to the County Administrator only those powers and duties which are administrative or ministerial in nature, and not to delegate any governmental power vested in the Board of County Commissioners as the governing body of Escambia County, Florida. To that end, the specifically enumerated powers below are to be construed as administrative in nature, and in any exercise of the governmental power, the Administrator shall only be performing the duty of advising the Board of County Commissioners in its role as the policy-setting governing body of the County.

(3) The powers and duties of the County Administrator shall include the following:

(a) Administer and carry out the directives and policies of the Board of County Commissioners and enforce all orders, resolutions, ordinances, and regulations of the Board, the County Charter, and all applicable law, to assure that they are faithfully executed.

(b) Report to the Board of County Commissioners on action taken pursuant to any directive or policy of the board.

(c) Provide the Board of County Commissioners,

or individual members thereof, upon request, with data or information concerning County government.

(d) Prepare and submit a tentative budget for the ensuing fiscal year to the Board of County Commissioners on or before July 15th of each year.

(e) Establish the schedules and procedures to be followed by all County departments, offices, and agencies in connection with the budget, and supervise and administer all phases of the budgetary process except pre-audit and post-audit requirements.

(f) Prepare and submit to the Board of County Commissioners after the end of each fiscal year a complete report on the finances and administrative activities of the County for the proceeding year and submit recommendations in connection therewith.

(g) Coordinate the care and custody of all County property, institutions, and agencies.

(h) Organize the work of County departments, subject to the County's Administrative Code, and review the departments, administration, and operation of the County and make recommendations pertaining thereto.

(i) Appoint, subject to the approval of the Board of County Commissioners, all department heads, who shall serve at the pleasure of the County Administrator, and employ, suspend, or discharge such personnel as may be necessary to administer and perform the County's functions and services, pursuant to appropriation, the Administrative Code, and any applicable civil service procedures. Except as otherwise provided in this Charter, department heads shall not be subject to civil service procedures, and may be suspended or discharged without Commission approval.

(j) Develop long-range fiscal plans for the County in coordination with the Elected County Charter Officers, and present such plans annually, updated as necessary, to the Commission for its review and adoption.

(k) Negotiate leases, contracts, and other agreements, including consultant services, for the County, subject to approval by the Board, and make recommendations concerning the nature and location of County improvements.

(l) See that all terms and conditions in all leases, contracts, and agreements are performed and notify the Board of any noted violation thereof.

(m) Order any department, division, or agency under his jurisdiction as specified in the Administrative Code to undertake any task for any other department, division or agency on a temporary basis if he deems it necessary for the proper and efficient administration of the County government.

(n) Designate a person to act during his absence.

(o) Attend all meetings of the Board with the authority to participate in the discussion of any matter. In coordination with the appropriate Elected County Charter Officers and department heads, review, analyze, and forecast trends of the County services, finances, and programs, and keep the Board informed of the results thereof.

(p) Perform such other duties as may be required of him by the Board of County Commissioners.

#### **SEC. 401.3 VACANCY**

**The Office of the County Administrator shall be**



declared vacant in the event of the incumbent's termination, resignation, death, moving his residence from the county, or if he is, by unexplained absence, illness or other disability, unable to continue in office or perform the duties of his office. A vacancy in the office shall be filled, within six (6) months from the time the vacancy occurs, in the same manner as the original appointment. The Board of County Commissioners may appoint an Acting Administrator in the case of vacancy until such time as a successor has been appointed and qualified or the Administrator returns.

#### SEC. 402 NONINTERFERENCE BY COUNTY COMMISSION

The Commission and its members shall deal with that portion of the County government for which the Administrator is responsible solely through the Administrator, and neither the Commission nor any member thereof shall interfere with the performance of any County employee under the direct or indirect supervision of the County Administrator.

### ARTICLE V JUDICIAL SYSTEM

#### SEC. 501 COURTS

The judicial branch of the Charter Government shall be provided by the Constitution and Laws of Florida and this Charter.



## ARTICLE VI ELECTED COUNTY CHARTER OFFICERS

### SEC. 601 ELECTED COUNTY CHARTER OFFICERS

There shall be six Elected County Charter Officers: the Clerk of the Circuit Court; the Comptroller; the Property Appraiser; the Sheriff; the Supervisor of Elections; and the Tax Collector. Except as provided herein, all County Constitutional Officers shall become Charter officers as of the effective date of this Charter, and the previously existing offices of like names shall thereupon be discontinued. Each of these officers shall have the powers, duties and responsibilities as are hereinafter specified, and each shall be a Charter officer and not a Constitutional officer. The budget and financial funding of each officer shall be subject to and in accordance with the unified budget as adopted by the Board of County Commissioners under this Charter.

#### SEC. 601.1 CLERK OF THE CIRCUIT COURT

The office of the Clerk of the Circuit Court, as provided by Chapter 28, Florida Statutes (1977) and general law shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. His duties shall include, without limitation, those specified for the Clerk of the Circuit and County Courts in Chapter 73-455, Laws of Florida. The Clerk of the Circuit Court shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

#### SEC. 601.2 COMPTROLLER

The office of Comptroller, as provided by Chapter 28,

Florida Statutes (1977) and general law for those counties having a Comptroller, shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. His duties shall include, without limitation, those specified for the Comptroller in Chapter 73-455, Laws of Florida. The Comptroller shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

#### **SEC. 601.3 PROPERTY APPRAISER**

The office of Property Appraiser as provided by general law shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. The Property Appraiser shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

#### **SEC. 601.4 SHERIFF**

The office of Sheriff as provided by Chapter 30, Florida Statute (1977) and general law, shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. The Sheriff shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

#### **SEC. 601.5 SUPERVISOR OF ELECTIONS**

The office of Supervisor of Elections as provided by general law shall continue as a County Charter Officer and, to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and ef-

fect. The Supervisor of Elections shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

#### SEC. 601.6 TAX COLLECTOR

The office of Tax Collector as provided by general law shall continue as County Charter Officer, and to the extent not inconsistent with this Charter, all laws applicable thereto shall continue in full force and effect. The Tax Collector shall qualify, be nominated, elected, and serve in the manner provided for the comparable office under the Laws of the State of Florida.

#### SEC. 602 SALARIES

Salaries of the six above Elected County Charter Officers shall be as provided by general law for the comparable office.

### ARTICLE VII ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

#### SEC. 701 DEPARTMENTS

There shall be not more than five (5) County departments under the Charter Government.

#### SEC. 702 DEPARTMENT HEADS

Each department head shall be the principal officer of the department and responsible for all its operations, and shall be appointed by the County Administrator subject to confirmation by the Commission and shall serve at the pleasure of the County Administrator. The Board of County Commissioners shall establish a salary range for

department heads; the exact salary of any department head shall be established within that range by the County Administrator.

## SEC. 703 CHANGES IN DEPARTMENTS

Changes in the number of departments established in this Article shall be made only by amendment to this Charter. Upon the recommendation of the County Administrator, the Board of County Commissioners may by ordinance make changes within departmental organizations including combinations, deletions and transfer of responsibilities among departments.

## SEC. 704 ADMINISTRATIVE CODE

(1) The rules, regulations, and administrative organization for all departments, divisions, agencies, and offices of Elected County Charter Officers of the county government shall be set forth in an Administrative Code. The said Code shall be published and made available to the public at cost, and shall be revised as necessary to reflect changes and remain current. Each department head, agency head, or Elected Charter Officer shall be responsible for his respective portion of the Administrative Code. Adoption and incorporation into the Administrative Code shall be required before rules and regulations shall become effective.

(2) The County Administrator shall be responsible for the preparation and submission to the Board of County Commissioners for adoption of all the Administrative Code material from all departments, divisions, boards, and agencies of the county within his jurisdiction. Each Elected County Charter Officer and each head of a county agency or board (other than agencies or boards within the County Administrator's jurisdiction) shall be responsible

for the preparation of his respective Administrative Code material, and the same shall be submitted to the Board of County Commissioners for incorporation into the Administrative Code. Amendments, deletions, or additions to the said Code may be made from time to time after such notice and public hearing as may be required under general law, as follows:

(a) By the Board of County Commissioners as to material submitted by the County Administrator; and

(b) By the respective Elected County Charter Officers or heads of agencies and boards as to material not required to be submitted through the County Administrator.

(3) The Board of County Commissioners, Elected County Charter Officers, and any applicable agency or board heads are empowered to, and shall, develop, adopt, and promulgate the procedures necessary to accomplish the foregoing in a manner that will afford the public a reasonable opportunity to advocate or oppose rules, regulations, or administrative organization.

(4) The initial Administrative Code under this Charter shall be promulgated within twelve (12) months after the effective date of the Charter.

(5) It shall be the responsibility of the County Administrator to insure that the Administrative Code is compiled, adopted, published, and revised in accordance with this section.

**ARTICLE VII  
ADMINISTRATIVE, REGULATORY AND AD-  
VISORY BOARDS**

**SEC. 801 BOARDS**

The Board of County Commissioners may create by ordinance, specifying the duties and membership thereof, such administrative, regulatory and advisory boards as it finds necessary and may also, by ordinance, abolish or alter such boards so created. Members of these boards shall serve without compensation, except for expenses as provided by general law and as approved by the Board of County Commissioners.

**SEC. 802 SANTA ROSA ISLAND AUTHORITY**

(1) The Santa Rosa Island Authority and its functions, responsibilities, duties, and obligations as provided for in Chapter 24-500, Laws of Florida, (1947) as amended shall continue to exist, except as provided herein for the appointment of members.

(2) The Santa Rosa Island Authority shall consist of five (5) members appointed by the County Commission. All members shall be electors of the County and at least one (1) member shall be a leaseholder of Santa Rosa Island property. Members shall be appointed for five (5) year terms, so staggered as to provide for one term to expire each year. Terms of initial appointees shall be determined by lot.

**SEC. 803 BOARD OF TRUSTEES OF CENTURY  
MEMORIAL HOSPITAL**

The Board of Trustees of Century Memorial Hospital and its functions, responsibilities, duties, and obligations

as provided in Chapter 77-553 Laws of Florida shall continue to exist.

## ARTICLE IX ELECTIONS

### SEC. 901 ELECTION PROCEDURES

Except as otherwise provided in this Charter, elections of County Commission members and Elected County Charter Officers shall be in accordance with general law.

### SEC. 902 COMMENCEMENT OF TERMS

All officers elected under this Charter shall begin their terms of office on the Tuesday two (2) weeks following the day of the General election.

### SEC. 903 NON-PARTISAN ELECTIONS

(This section shall be included only if the voters approve Non-Partisan elections.)

(1) Elections for all Charter offices shall be on a non-partisan basis. No candidates shall be required to pay any political party assessment or be required to state the political party of which they are a member. All candidates' names shall be placed on the ballot without reference to political party affiliation.

(2) In the event that more than two (2) candidates have qualified for any single seat under Charter government, a primary election shall be held at the time of the first state primary election prior to the general election and providing that no candidate receives a majority of the votes cast, the two (2) candidates receiving the highest vote shall be placed on the ballot for election at the time of the general election.



(3) Each candidate for a Charter office shall be required to pay a filing fee in the amount of three (3) percent of the annual salary of the office. Such filing fees shall accrue to the County.

(4) Candidates qualifying by petition in accordance with general law shall be exempt from paragraph (3) above.

## ARTICLE X PERSONNEL ADMINISTRATION

### SEC. 1001 PURPOSE

The purpose of this article is to provide a modern and comprehensive system of personnel administration based on merit principles and methods which promote efficiency and economy in the personnel services rendered, and fairness and equity to the employees and taxpayers of the county. The system shall provide means to recruit, select, develop and maintain an effective and responsive work force.

### SEC. 1002 MERIT SYSTEM

The merit system for the employees of the County and the District School Board shall be continued.

### SEC. 1003 NON DISCRIMINATION POLICY

No career Civil Service employee or applicant for employment shall be favored or discriminated against in any aspect of personnel administration because of religious or political opinions or affiliations, race, national origin, sex, age or physical disability except where sex, age or physical ability constitute a bona fide occupational qualification. Any applicant or employee who has reason to believe that he or she has been discriminated



against in any personnel action may appeal to the Civil Service and Personnel Board.

## **SEC. 1004 UNCLASSIFIED AND CLASSIFIED SERVICE**

The personnel system of the Charter Government shall provide for the employment of qualified personnel and shall include all necessary provisions to insure protection of both employee and employer. This system shall have two basic divisions, the classified or career service and the unclassified or exempt service.

### **SEC. 1004.1 CLASSIFIED OR CAREER SERVICE**

The classified or career service shall include all employees of Escambia County and the District School Board who are not in exempt positions as provided in this Charter and who are covered by the merit system.

### **SEC. 1004.2 UNCLASSIFIED OR EXEMPT POSITIONS**

The Civil Service and Personnel Board shall maintain a list of all exempt positions along with the documentation of the applicable positions for exemption. Exempt positions shall include:

(1) All elected officials, persons appointed by the Governor, the County Administrator and department heads appointed by the County Administrator.

(2) Members of boards, advisory councils and committees that serve without pay.

(3) Instructional and administrative personnel of the District School Board as defined in Section 228.041 (9) and Section 228.041 (10), Florida Statutes as they now read or may be hereafter amended.

(4) Other officials and employees of the Board of County Commissioners and the District School Board whose positions are exempt at the time of Charter adoption may be continued in an exempt status as provided below.

(a) Two (2) years after Charter adoption and every two years thereafter, existing exempt positions shall be reviewed and may be approved by the Civil Service and Personnel Board. At this time any requests for additional exempt positions shall also be considered. All requests shall be supported by adequate documentation describing the duties, responsibilities and qualifications of the position and must be in accord with budgetary limitations.

(5) The Civil Service and Personnel Board shall establish guidelines and criteria for the establishment of exempt positions, except those named in sections (1), (2), and (3) above.

(6) Public notice shall be given in a daily newspaper of general circulation in Escambia County, between seven (7) and fifteen (15) days prior to any meeting of the Civil Service and Personnel Board at which additional exempt positions will be considered.

## SEC. 1005 STATUS OF EMPLOYEES

### (1) Career Service

The status of all classified employees shall be fully protected upon the adoption of this Charter according to the provisions of S. 125.88, Florida Statutes. All officers and employees in the classified service of the County shall be transferred to the appropriate department, division or agency under the Charter. Such transfers shall be without examination or reduction of existing compensation, pension, or retirement rights.

## (2) Exempt Employees

Employees of the County and District School Board who are unclassified and hold their positions by appointment shall be continued under Charter if they are appointed under proper authority subject to the provisions of this Charter. An exempt or unclassified employee shall not be placed in a classified position until said employee has made application for, fulfilled the requirements of, and been examined for the position sought, and has been placed on the roster by the same procedure followed by other applicants. The Board shall, by rule, grant point preference to such former employees as established for former classified employees.

## SEC. 1006 CIVIL SERVICE AND PERSONNEL BOARD

(1) The Civil Service and Personnel Board shall be composed of seven (7) members. One member shall be elected by each of the following groups prior to February 15th:

February 15th:

- (a) Board of County Commissioners
- (b) District School Board
- (c) Classified employees of the County
- (d) Classified employees of the District School Board
- (e) Elected Charter Officers; (The Sheriff, the Clerk of the Circuit Court, the Comptroller, the Property Appraiser, the Supervisor of Elections, and the Tax Collector).

Two (2) members shall be public members elected by the first five (5) members. The affirmative vote of four (4) of

the first five (5) members shall be required to elect the two (2) public members.

(2) In the event the five (5) members cannot agree upon the sixth (6th) and seventh (7th) members within thirty (30) days after taking office, the Chief Judge of the Circuit Court shall designate such members.

(3) The Civil Service and Personnel Board shall by February 1st establish appropriate procedures for the election of Board members by the classified employees of both the County and the District School Board.

#### SEC. 1006.1 TRANSITION

The members of the Civil Service and Personnel Board prior to the effective date of this Charter shall remain in office until March 1st following the effective date of this Charter, at which time the Board members elected under the provisions of this Charter shall take office in the manner prescribed as follows. Initially, the Board of County Commissioners shall elect one (1) member for a two (2) year term, the District School Board shall elect one (1) member for a two (2) year term, and the Elected County Charter Officers, as a group, shall elect one (1) member for a two (2) year term. The Classified employees of the County shall elect one (1) member for a two (2) year term, and the Elected County Charter Officers, as a group shall elect one (1) member for a four (4) year term and the classified employees of the District School Board shall elect one (1) member for a four (4) year term. The sixth (6th) (public) member and the seventh (7th) (public) member shall be elected for four (4) year terms. Following the initial terms, the terms of all members shall be for four (4) years.

## SEC. 1006.2 TERMS OF OFFICE

Members of the Civil Service and Personnel Board shall serve staggered four (4) year terms. A member of the Civil Service and Personnel Board shall not be removed from office except by the Governor of the State, as provided for in the general law and the Constitution of the State of Florida. Any vacancy on the Board shall be filled within thirty (30) days in the manner by which the vacated member was elected.

## SEC. 1006.3 QUALIFICATIONS

Members of the Civil Service and Personnel Board shall be qualified electors of the County and shall be persons in sympathy with the application of merit principles to public employment. No member of the Civil Service and Personnel Board shall be employed in any capacity by any agency covered by the Escambia County personnel system; nor shall any member hold or be a candidate for any paid public office or employment or be a member of any local, state or national committee of a political party or an officer in any partisan political club or organization. The Standards established in Section 1202.1 of this Charter shall apply to members of the Civil Service and Personnel Board.

## SEC. 1006.4 OFFICERS AND MEETINGS

The Civil Service and Personnel Board shall elect one of its members as a Chairman and another as Vice Chairman; and shall meet at least once a month at such time and place as shall be specified by call of the Chairman. Advance notice of all meetings shall be provided to each member, and to the news media, either orally or in writing. Except in unusual circumstances, the regular monthly meetings shall be at an established time and place. All meetings shall

be open to the public. Four (4) members of the Civil Service and Personnel Board shall constitute a quorum for the transaction of business unless the action requires the affirmative vote of five (5) members as provided by this article.

#### SEC. 1006.5 REMUNERATION

The members of the Civil Service and Personnel Board shall not receive salary but shall be reimbursed for expenses in a manner to be determined by resolution of the Board of County Commissioners.

#### SEC. 1006.6 POWERS AND DUTIES OF THE BOARD

The powers and duties of the Civil Service and Personnel Board shall be as follows:

(1) To establish Rules and Regulations for the administration of this article. The Rules and Regulations shall be published with the Administrative Code.

(2) To make investigations concerning the enforcement of this Article.

(a) To conduct hearings, administer oaths, take depositions, issue subpoenas, compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(b) In case of disobedience by any person to comply with an order or subpoena issued by the Board, or the refusal of a witness to testify in lawful interrogation, the Board shall make application to a judge of the Circuit Court of Escambia County, Florida to compel obedience.

(3) To punish by suspension or dismissal any classified employee found, after due notice and hearing, guilty of any violation of this Article or the Rules and Regulations of the Board.

(a) Appeals from Board action shall be by certiorari to the Circuit Court of Escambia County, Florida.

(4) To review, at its discretion, any investigation by an employer concerning misconduct by an employee and to determine whether or not a violation has occurred. The Board shall have the power to approve, modify or set aside any disciplinary action taken or recommended by an employer against a classified employee.

(5) To hear and determine appeals or complaints respecting the administration of this Article.

(6) To ascertain, develop and record the qualifications, duties and responsibilities pertaining to all classified positions of the merit system.

(a) Each appointing authority shall ascertain, record the qualifications, duties, responsibilities and salary range of all unclassified positions and shall file same with the Civil Service and Personnel Board.

(7) To prepare and conduct competitive tests to determine qualifications of persons who seek employment in any classified position and to establish employment lists for the various classes of positions.

(8) To establish a system of performance rating to be used in determining promotions, the order of layoffs and reemployment, and for other purposes.

(9) To keep necessary records for the proper administration of the personnel system and make a status report concerning all employees of the County, both classified and exempt, to the people and officials of Escambia County on July 1 of each year.

(10) To employ necessary staff to carry out this Article.



(11) to retain legal counsel.

(12) By the affirmative vote of five (5) members of the Board, to amend, repeal, or add to the provisions of House Bill 947 as enacted by the 1979 Legislature (which special act and all amendments thereto are expressly incorporated herein to the extent not inconsistent with this Charter), by rule or regulation adopted and promulgated as a part of the Administrative Code to such extent as may be consistent with the Article.

(13) In addition to the above, the Civil Service and Personnel Board shall have all powers and duties as provided in general law and existing local law, except where such laws are inconsistent with this Charter.

#### **SEC. 1006.7 PAY PLAN FOR CLASSIFIED EMPLOYEES**

(1) The Civil Service and Personnel Board shall complete a comprehensive classification and wage survey every three (3) years and shall make annual studies to determine the adequacy and fairness of the pay plan.

(2) Prior to June 1st of each year the Civil Service and Personnel Board shall recommend the pay scales, wages and salaries, for all classified employees to the Board of County Commissioners and to the District School Board. As the appropriating authorities, the Board of County Commissioners shall make the final determination in approving annual wages for all employees of the County, and the District School Board shall make the final determination in approving annual wages for classified employees of the District School Board.

(3) The Civil Service and Personnel Board shall prescribe in its Rules and Regulations standard policies



governing the administration of the pay plan and other elements of compensation.

(4) All appointing authorities shall furnish a copy of each payroll, both classified and unclassified, to the Civil Service and Personnel Board immediately following the pay period. The Board shall give written notice to the appropriate employer of any item which appears to be in conflict with this Article or the Rules and Regulations of the Board. Any payment made on any item so noticed after receipt of said notice shall be considered improper expenditure of public funds.

(5) The existing pay plan at the time of Charter adoption shall remain in effect until amended as herein provided.

## SEC. 1007 PERSONNEL DIRECTOR

### SEC. 1007.1 QUALIFICATIONS

The personnel director shall be a member of the classified service chosen by the Civil Service and Personnel Board on the basis of professional education, training and experience in personnel administration.

### SEC. 1007.2 DUTIES

The personnel director shall direct the staff of the Board and be responsible to the Board for the administration of the personnel system in accordance with this Charter and as provided in the Rules and Regulations of the Board.

## SEC. 1008 FINAL AUTHORITY

The determination of the Civil Service and Personnel Board shall be final as to whether offices and positions are under classified service, subject only to judicial review.

**SEC. 1009 PERSONNEL REVIEW**

Classified employees covered by the merit system shall be entitled to request a review by the Board of any action taken pertaining to his or her employment or employment rights established under the Rules and Regulations of the Board. The right of appeal from any disciplinary action, transfer, demotion or discharge applies exclusively to members of the classified service.

**SEC. 1010 SUPPORT OF THE PERSONNEL SYSTEM**

(1) The Board of County Commissioners shall provide adequate and suitable office space and sufficient funds for the operation of an efficient civil service and personnel system.

(2) Each agency, appointing authority of the County government, and any other appointing authorities receiving services from the County Civil Service and Personnel System, shall reimburse the County on a pro-rata basis for the operating costs of the personnel system.

**SEC. 1011 UNLAWFUL ACTS PROHIBITED**

(1) No persons shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment made under any provision of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and policies.

(2) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service or other valuable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the career service.

## ARTICLE XI FINANCE

### SEC. 1101 FISCAL YEAR

The fiscal year of the County shall begin on October 1 of each year and shall end on September 30 of the following year.

### SEC. 1102 GENERAL

The County and all County offices, departments, and agencies shall operate under a unified and uniform budget system. The County's annual budget and all budgetary processes shall be in accordance with general law except as otherwise provided in this Charter. All fees collected by officers and employees of the County shall be deposited promptly in the County Treasury. All officers and employers of the County shall be compensated by salaries, and no officer or employee of the County shall be compensated by fees, directly or indirectly, arising from or occasioned in any way as a result of official duties.

### SEC. 1103 BUDGETS

There shall be prepared, approved, adopted and executed for each fiscal year and for such additional periods as the Board of County Commissioners may deem advisable, a budget for such funds as may be required by law or by sound financial practices and generally accepted accounting principles. The budget shall be controlling for purposes of levying taxes and expending funds for all County purposes.

#### SEC. 1103.1 PREPARATION OF THE BUDGET

(1) It shall be the responsibility of the County Administrator to prepare and submit a tentative budget for

the ensuing fiscal year to the Board of County Commissioners. All information and data necessary for the preparation of the tentative budget shall be provided by the appropriate County officers or employees on or before June 1 of each year, including a tentative budget for each office, department, agency, or fund for which the respective officer or employee is responsible.

(2) The County Comptroller shall have the duty to study the proposed budget and appear before the Board of County Commissioners to offer any comments regarding the financial and/or legal soundness of the document.

#### SEC. 1103.2 REVIEW AND ADOPTION

(1) The Board of County Commissioners shall receive and examine the tentative budget submitted to them and shall examine the tentative budget for each office and each fund. Revisions in the tentative budget may be made in the Board's discretion, but priority shall be given to those areas of budgeted expenditures necessary for the performance of governmental duties and obligations imposed by general law or by this Charter.

(2) Upon the completion of any revisions made by the Board of County Commissioners, the Board shall prepare a statement summarizing all of the tentative budgets in the manner provided by general law. They shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the County on or before September 1 of each year, and the advertisement shall state that the Board of County Commissioners shall meet on a day fixed in the advertisement, not earlier than one week and not later than two weeks from the date of the advertising, for the purpose of hearing requests and complaints from the public and from any affected County officer regarding the tentative budget of the County.

(3) The Board shall meet upon the date fixed in the advertisement and from day to day thereafter if necessary for the purpose of holding a public hearing and making whatever revisions in the budget it may deem necessary, and shall thereupon adopt the revised budget and file the same with the County Comptroller as a public record on or before October 1 of each year.

(4) Each Elected County Charter Officer shall have the right of budgetary appeal both as described elsewhere in this Article and by certiorari to the Circuit Court, but no such officer shall have the right to appeal to the Florida Department of Administration or to the Florida Department of Revenue, or any other state department, pursuant to Sections 30.49 and 195.087, Florida Statutes (1977), or any other provision of general law applicable to non-Charter officers. Petitions for certiorari to the Circuit Court must be filed within ten (10) days from the date of the final adoption of the budget by the Board of County Commissioners.

#### SEC. 1103.3 IMPLEMENTATION AND AMENDMENT OF THE BUDGET

(1) The budget as finally adopted by the Board of County Commissioners shall regulate the expenditures of the County, and the itemized estimates of expenditures shall have the effect of fixed appropriations and shall not be amended or altered or exceeded except as provided by general law or under this Charter.

(2) Upon written approval of the County Administrator appropriations for expenditures in any department may be decreased and other appropriations in the same department correspondingly increased, provided that the total appropriation of the department shall not be changed.

(3) The Board of County Commissioners may, from time to time within a fiscal year, amend the budget for that year as follows:

(a) Appropriations from the reserve for contingencies may be made to increase the appropriation for any particular expense in the same fund or department, or to create an appropriation in the fund or department, for any lawful purpose, but no expenditures shall be charged directly to the reserve for contingencies.

(b) A receipt of a nature from a source not anticipated in the budget and received for a particular purpose, including but not limited to federal or state grants, other grants, donations, gifts, or reimbursements for damages, may by resolution of the Board spread on its minutes, with at least seven (7) days notice, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget. Such receipts and appropriations shall be added to the budget of the proper fund or department.

(c) Increased receipts for enterprise or proprietary funds received for a particular purpose may, by resolution of the Board spread on its minutes, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget.

(d) A receipt of a nature from a source not anticipated in the budget, and not received for a particular purpose, including but not limited to additional tax revenues, federal revenue funds, or state revenue sharing funds, may, by resolution of the Board spread on its minutes, after not less than seven (7) days notice, and after all receipts anticipated in the budget have been actually received, be appropriated and expended for such purposes and in such manner as may be lawful.

(e) In the event that the revenues actually received are less than anticipated and appropriated in the budget, the Board of County Commissioners may, upon the recommendation of the County Administrator, amend the budget to provide for appropriate recommendation of the County Administrator, amend the budget to provide for appropriate reductions in the general operations budget, each county Charter Officer's budget, and the other budgets incorporated in the County's unified budget, and in such event, shall publish a summary statement of the proposed amendment to the budget necessary to bring the budget into balance; and shall hold hearings for the purpose of such amendments in the manner required for the original adoption of the budget and to make such changes thereto as may be warranted.

(f) The seven (7) days notice requirement detailed in paragraphs (b) and (d) above may be waived by resolution of the Board of County Commissioners, on a case-by-case basis, if the satisfaction of that requirement would preclude receipt of such funds.

(4) Transfers may be made between funds to correct errors in handling receipts and disbursements or for budgeted transfers. Appropriations for expenditures in any fund may be decreased and other appropriations in the same fund correspondingly increased by motion recorded in the minutes, provided that the total of the appropriations of the fund be not changed.

#### SEC. 1104 BUDGET REVIEW BOARD

There shall be a Budget Review Board for the County, comprised of citizens of the County, which shall hear and review budget disputes, and advise the Board of County Commissioners regarding any budget disputes among the



parties described in Section 1104.3 in relation to the tentative budgets as promulgated under Section 1103.2 (2) of this Charter.

#### **SEC. 1104.1 APPOINTMENT OF THE BUDGET REVIEW BOARD**

The Budget Review Board shall consist of five (5) members appointed as follows:

(1) Prior to June 1 of each year the Board of County Commissioners shall appoint two (2) members and the Elected County Charter Officers, acting as a group, shall appoint two members.

(2) These four (4) members shall select the fifth (5th) member.

(3) In the event said four (4) members cannot agree upon the fifth (5th) member within thirty (30) days after said members take office, the Chief Judge of the Circuit Court serving Escambia County shall designate the fifth member.

#### **SEC. 1104.2 QUALIFICATIONS OF MEMBERS**

Members of the Budget Review Board shall be qualified electors of the County. No member of the Budget Review Board shall be employed in any capacity by any agency receiving funds from Escambia County; nor shall any member hold or be a candidate for any paid public office or employment or be a member of any local, state or national committee of a political party or an officer in any partisan political club or organization.

#### **SEC. 1104.3 DELIBERATIONS OF THE BUDGET REVIEW BOARD**

The Budget Review Board shall meet as necessary to consider the budgetary disputes and render its opinion



thereon prior to the scheduled public budget hearings. Each affected Elected County Charter Officer and the Civil Service and Personnel Board shall have the right to appeal to the Budget Review Board, and the right to appear before the Board and present relevant evidence. Appeals to the Budget Review Board shall be in writing and shall be filed with the County Administrator not less than three (3) days prior to the scheduled public budget hearings. The opinions and recommendations of the Budget Review Board regarding any budgetary dispute shall be presented to the Board of County Commissioners in writing, but shall be considered as advisory only. In the event of judicial review by certiorari, however, such written opinions and recommendations shall be admissible as evidence.

#### SEC. 1104.3 DELIBERATIONS OF THE BUDGET REVIEW BOARD

The Budget Review Board shall meet as necessary to consider the budgetary disputes and render its opinion thereon prior to the scheduled public budget hearings. Each affected Elected County Charter Officer and the Civil Service and Personnel Board shall have the right to appeal to the Budget Review Board, and the right to appear before the Board and present relevant evidence. Appeals to the Budget Review Board shall be in writing and shall be filed with the County Administrator not less than three (3) days prior to the scheduled public budget hearings. The opinions and recommendations of the Budget Review Board regarding any budgetary dispute shall be presented to the Board of County Commissioners in writing, but shall be considered as advisory only. In the event of judicial review by certiorari, however, such written opinions and recommendations shall be admissible as evidence.

**SEC. 1104.4 SUPPORT**

The Board of County Commissioners shall provide a suitable meeting room, secretarial assistance, and such other support as may be necessary for the Budget Review Board to perform its duties.

**SEC. 1105 BONDS****SEC. 1105.1 OUTSTANDING BONDS**

All outstanding bonds issued by former governments including the Board of County Commissioners of Escambia County and all special districts or authorities abolished or altered by this Charter are obligations of the County government; however, payment of such obligations and the interest thereon shall be made solely from and charged solely against funds derived from the same sources from which such payment would have been made had this Charter not become effective.

**SEC. 1105.2 AUTHORITY TO ISSUE**

The County shall have the authority to issue any bonds, certificate of indebtedness or any form of tax anticipation certificates authorized by the Constitution, general law, and this Charter.

**SEC. 1105.3 SALE OF BONDS**

All bonds issued by the County shall be duly advertised and shall be sold in the manner which produces the lowest net interest cost for such bonds, calculated as the Commission may prescribe.

**SEC. 1105.4 ADMINISTRATION**

The County shall have the necessary authority to administer the collection of funds and the payments of amounts due on any bonds.

**ARTICLE XII  
CODE OF ETHICS****SEC. 1201 PURPOSE**

It is essential to the proper conduct and operation of County government that public officials be independent and impartial, and that public office not be used for private gain other than the remuneration provided by law. The interest of the citizens of Escambia County, therefore, requires that this Charter protect against any conflict of interest and establish standards for the conduct of elected officials and County employees in situations where conflicts may exist.

**SEC. 1202 APPLICATION OF THE CODE  
OF ETHICS**

All elected County officials, and all County employees or agents shall be subject to the code of ethics for public officers and employees as provided in Part III of Chapter 112, Florida Statutes, as such chapter now exists or may hereafter be amended.

**SEC. 1202.1 STANDARDS**

(1) Conflict of Interest. No officer, employee, or agent of the County shall knowingly:

(a) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his of-

ficial duties or would tend to impair his independent judgment or action in the performance of his official duties;

(b) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independent judgment or action in the performance of his official duties;

(c) Disclose privileged information concerning the property, government, or affairs of the County, or any part thereof, without proper legal authorization, nor shall he use such information to advance the financial or other private interest of himself or others;

(d) Accept any valuable gift, whether tangible or intangible, from any person, firm, or entity which, to his knowledge, is interested directly or indirectly in any manner and to any extent in business dealings with the County government or a part thereof; provided, however, that any such officer, employee, or agent who may be a candidate for public office may accept campaign contributions and services in connection therewith in accordance with general law;

(e) Represent private interests in any action or proceeding against or in any way involving the County.

(f) Vote or otherwise participate in the negotiation or the making of any contract with any business or entity in which he has a financial interest, whether directly or indirectly, and whether present or prospective.

(2) Disclosure. Any officer, employee, or agent of the County having any private financial interest, directly or indirectly, present or prospective, in any contract or mat-

ter pending before or within any department of the County shall disclose such private interest to the Board of County Commissioners. Any member of the Board of County Commissioners who has such a private financial interest in any matter pending before the Board shall disclose such private interest in public which shall be recorded in the minutes, and shall disqualify himself from participating in any decision or vote relating thereto. Any officer or employee of any independent agency of the County to which this Code of Ethics applies who shall have any private financial interests as aforesaid in any contract or matter pending before or within such independent agency shall disclose such private interest to the government body of such independent agency.

(3) Use of Public Property. No officer, employee, or agent of the County, or any agency or part thereof, shall use property owned by the County for personal benefit, convenience, or profit.

#### SEC. 1203 FINANCIAL DISCLOSURE

All elected County officials and the County Administrator, all County department heads, the County Attorney, and the administrators or directors of each County independent agency, institution, or facility employing more than five (5) employees shall be subject to the financial disclosure provisions of Section 112.3145, Florida Statutes (1977) as such section now exists or may hereafter be amended.

**SEC. 1204 PENALTIES**

Penalties for the violation of either the code of ethics or the financial disclosure requirements as provided in this article shall be in accordance with the general law of the State of Florida.

**ARTICLE XIII  
MISCELLANEOUS PROVISIONS****SEC. 1301 EFFECTIVE DATE**

This Charter shall become law when approved by a majority of those voting in a special election to be held in the County under the provisions of the Constitution and Laws of Florida. If so approved the effective date of this Charter shall be January 1, 1980.

**SEC. 1302 AMENDMENT**

This Charter shall be amended only by referendum election. Amendments may be proposed by one (1) of three (3) methods described in this Section. Each proposed amendment shall embrace but one subject and matter properly connected there-with.

**SEC. 1302.1 AMENDMENT BY BOARD OF COUNTY COMMISSIONERS**

The Commission by a vote of five (5) members shall have the authority to propose amendments to this Charter. However, they may not exercise such power within one (1) year of the effective date of this Charter.

**SEC. 1302.2 AMENDMENT BY PETITION**

Amendments to this Charter may be proposed by a petition signed by a number of registered voters equivalent to

five (5) percent of the number of voters registered for the last general election. Any such petition shall be filed with the Board of County Commissioners and shall be validated or invalidated by the Supervisor of Elections.

#### SEC. 1302.3 CHARTER REVIEW COMMISSION

The Board of County Commissioners shall appoint, within five (5) years from the effective date of this Charter and at least every ten (10) years thereafter, a Charter Review Commission of eleven (11) members whose duty it shall be to review the Charter. The Charter Review Commission shall be organized and shall function in the manner set forth in Sections 125.61 (2) and 125.62 Florida Statutes, (1977). Within one (1) year of its initial meeting the Charter Review Commission shall present to the Board of County Commissioners its proposed amendments, if any, to the Charter. The Board of County Commissioners shall then comply with the provisions of Section 1303 of this Charter. Upon completion of their report, the Charter Review Commission will be dissolved.

(1) Any amendment proposed in accordance with this Article shall be subject to referendum. Notice of said referendum, together with the exact language of the proposed amendment, shall be published twice in a newspaper of general circulation in the County not more than forty-five (45) days nor less than thirty (30) days prior to the referendum election, and another notice shall be likewise published not more than ten (10) days nor less than five (5) days prior to the referendum election. Proposed amendments shall be placed on the ballot as received, without revision. Passage of proposed amendments shall require approval of a majority of electors voting in said election.

(2) All proposed amendments must be presented by the

County Commission to the electorate at the next general or special election unless submitted within sixty (60) days of said election; or, the County Commission, by an affirmative vote of five (5) Commissioners, may call a special election to present proposed amendments to the electorate.

#### SEC. 1304 EFFECT ON LOCAL LAWS

All existing ordinances, regulations and resolutions of the County shall remain operative except where inconsistent or indirect conflict with this Charter or until amended or repealed by the Board of County Commissioners.

#### SEC. 1305 CONFLICT OF COUNTY ORDINANCES WITH MUNICIPAL ORDINANCES

Notwithstanding any other provisions of this Charter, any County ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

#### SEC. 1306 POLITICAL ACTIVITY

All officers and employees of the Charter Government shall retain the right to hold membership in, and support, a political party, to vote as they choose, to express privately their opinions on all political subjects and candidates, to maintain political neutrality, and to attend political meetings.

However,

(1) No employee of the County shall hold, or be a candidate for, public or political office.

(2) No officer or employee of the County or member of the Civil Service and Personnel Board shall solicit any assessments, contributions, or services, for any political party or candidate from any employee of the County.



(3) No employee of the County or member of the Civil Service and Personnel Board shall take an active part in any political campaign on county property or during his duty hours.

(4) No leave of absence shall be granted to any person for the purpose of participating in any political campaign.

#### **SEC. 1307 SEVERABILITY**

If any part of this Charter is held unconstitutional, the remainder thereof shall remain in full force and effect.

#### **SEC. 1308 INELIGIBILITY FOR APPOINTMENT**

No elected County official or member of the Civil Service and Personnel Board during the term for which he has been elected or appointed, or for one (1) year thereafter, shall be eligible for appointment to any office, position or employment in the Charter Government which carries compensation.

Any elected official of this Charter Government may be recalled and removed from office by petition and recall election in accordance with the procedures established in Section 100.361, Florida Statutes (1977).

#### **SEC. 1310 DISTRICT SCHOOL SYSTEM – RELATION TO CHARTER GOVERNMENT**

The functions now performed by the Civil Service and Personnel Board, the Property Appraiser, the Tax Collector and any other departments or agencies of the County for the District School Board or its employees shall, where not inconsistent with this Charter, continue to be performed under this Charter.

**SEC. 1311 VACANCIES**

A vacancy in the office of any elected County official shall occur upon the death of the incumbent, his removal from office, resignation, succession to another office, unexplained absence for sixty (60) consecutive days, failure to maintain the residency required, or upon failure of one elected or appointed to the office to qualify within thirty (30) days from the commencement of the term of office or appointment. Vacancies shall be filled in accordance with the Constitution and Laws of Florida.

**SEC. 1312 SUSPENSIONS**

Suspensions from office of any County elected official shall be for cause and shall be in accordance with the Constitution and Laws of Florida.

**SEC. 1313 SPECIAL ACTS**

The functions, responsibilities, duties and obligations under or pursuant to all Special Acts not mentioned in this Charter relating to Escambia County, Florida, that are regulated or governed by the Board of County Commissioners and/or their funding source is the Commission are hereby transferred to and vested in the Charter Government. Except as provided in Section 1006.2 (12) above, all existing Special Acts incorporated by reference elsewhere in this Charter and Special Acts affecting the duties and terms of office of Elected Charter Officers may be amended or repealed only by amendment to this Charter. Other Special Acts vested in the Charter Government by this section may be amended or repealed by ordinance enacted by the Board of County Commissioners. No Special Acts subsequently enacted shall affect the Charter Government without the specific approval of the voters.

ARTICLE XIV  
TRANSITION PROVISIONS

SEC. 1401 REFERENDUM AND BALLOT

Election on this Charter shall be held in accordance with the requirements of the Constitution and Laws of Florida. The question on the ballot shall be as follows:

SHALL THERE BE A HOME RULE CHARTER FOR ESCAMBIA COUNTY, FLORIDA, PROVIDING FOR THE RESTRUCTURING OF COUNTY GOVERNMENT, WHICH SHALL TAKE EFFECT JANUARY 1, 1980, AS PROPOSED BY CHARTER DATED JUNE 18, 1979.

FOR HOME RULE CHARTER: \_\_\_\_\_

AGAINST HOME RULE CHARTER: \_\_\_\_\_

SEC. 1402 ADDITIONAL REFERENDUM QUESTION:

An additional question shall be provided on the referendum ballot to read as follows:

SHALL THIS HOME RULE CHARTER PROVIDE FOR NON-PARTISAN ELECTIONS OF ALL COUNTY OFFICIALS?

FOR NON-PARTISAN ELECTIONS: \_\_\_\_\_

AGAINST NON-PARTISAN ELECTIONS: \_\_\_\_\_

SEC. 1403 OFFICES AND OFFICERS OF  
FORMER GOVERNMENT

Unless otherwise provided by this Charter all offices, officials, boards, commissions and agencies of the former government shall continue to perform their respective duties and functions until their respective successors have been elected or appointed and take office.

**SEC. 1404 PROCEEDINGS CONTINUED**

All proceedings and petitions pending before any officer or office department or board of any of the former governments or districts shall remain in full force and effect. All such petitions, hearings or other proceedings shall be completed by the offices, officers, departments or boards of the Charter Government succeeding to the rights, duties and obligations of former governments.

**SEC. 1405 INTERIM VOTING RULES - BOARD OF COUNTY COMMISSIONERS**

Until the election and seating of the two (2) additional County Commissioners established by this Charter, all voting rules and procedures of the former Board of County Commissioners shall remain in effect.

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

I, Joe A. Flowers, Comptroller and ex-officio Clerk to the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the attached is a true and correct copy of the proposed Home Rule Charter for Escambia County, as filed with me by the Chairman of the Escambia County Charter Commission on June 29, 1979, and made a part of the permanent records of the Board of County Commissioners of Escambia County, Florida.

Joe A. Flowers  
County Comptroller and  
ex-officio Clerk to the  
Board of County Commis-  
sioners of Escambia  
County, Florida

/s/ Joe A. Flowers  
Joe A. Flowers,  
County Comptroller

SEAL

**EXCERPTS OF TRIAL TRANSCRIPT**

\* \* \* \* \*

**TESTIMONY OF DR. JERRELL H. SHOFNER****[13] DR. JERRELL H. SHOFNER,**

called as a witness by the plaintiffs, being first duly sworn,  
testified as follows:

**DIRECT EXAMINATION****[14] BY MR. BLACKSHERE:**

Q. Dr. Shofner, you've been sworn? A. Yes.

MR. BLACKSHER: May it please the Court, this is Dr. Jerrell H. Shofner, who was born in 1929 in Haslet, Texas. He has a high school diploma from Grapevine High School in Texas, bachelor of science from Florida State University in 1960, a master of science from Florida State University in 1961, a PhD. from Florida State University in 1963. He has been on the faculties as an assistant professor and associate professor at Florida State University, Georgia Southern College, Texas Woman's University, University of Florida, and most recently he is a full professor and the chairman of the Department of History at Florida Technological University in Orlando. Dr. Shofner has also been the assistant dean of the College of Arts and Sciences at Texas Woman's University. During, he's been fourteen years in the United States Air Force and during the last eleven years, during 1949 to 1960, he was able to do, begin his career at Florida State University as a student. Dr. Shofner is a historian.

THE COURT: He's a what, sir?

MR. BLACKSHER: Historian.

THE COURT: Yes, sir.

[15] MR. BLACKSHER: He is, among other things, a member of the Florida Advisory Board for the National Historical Publications and Records Commission. He is a consultant of the Florida League of Women Voters Conference on the Executive Branch of Government. He is a member of the Editorial Board of the *Florida Historical Quarterly*, or he was from 1969 to 1977. He is presently president of the Florida Historical Society recently placed in office this year. He is the program chairman for the Conference on Ethnic Minorities of the Gulf Coast History and Humanities Conference which will be held in Pensacola in October of this year. He has a number of scholarly achievements and awards including Phi Beta Kappa and a number of other professional awards and memberships. Among his important publications which we would call to the attention of the Court are a book published in 1974 called *Nor is it Over Yet: Florida in the Era of Reconstruction, 1863 to 1877*. And among the articles that he has published we would call to the Court's attention "The Florida Constitution of 1868" in the *Florida Historical Quarterly* for 1963; "Fraud and Intimidation in the 1876 Election in Florida," again in the *Florida Historical Quarterly*, 1965; "Political Reconstruction in Florida," in the *Florida Historical Quarterly*, 1966. He [16] submitted the section on Florida to Collier's Encyclopedia in 1971 and an article called "Militant Negro Laborers in Reconstruction Florida," *Journal of Southern History*, 1973. The documents marked as plaintiffs' exhibit 1, which is on the clerk's desk - strike that, plaintiffs' exhibit 4, which is on the clerk's desk, is the curriculum vita of Dr. Shofner and contains other information about Dr. Shofner. Is what I have read just now, Dr. Shofner, correct? A. Yes.

THE COURT: You submit him as an expert. Does anyone wish to inquire at this time of him?

MR. CATON: No specific inquiries in that area.

MR. BLACKSHER: Your Honor, for the record, we seek to qualify Dr. Shofner as an expert in Florida political and social history.

THE COURT: Yes, sir. They say they don't wish to. You may so treat him as an expert in that direction and proceed.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Shofner, when did the lawyers for the plaintiffs in this case first contact you? A. The latter part of January this year, as I recall.

Q. And what did we ask you to do for us, please?  
[17] A. You wanted me to provide the general historical background for the pattern of segregation and disenfranchisement of blacks in Florida in state and local government.

Q. Did we ask you to investigate anything about at-large elections in Florida? A. Well, yes, that was the specific issue. The question is when at-large elections were implemented and when they were changed to districts and that sort of thing.

Q. Dr. Shofner, is your consultant's fee in any way contingent on the outcome of this litigation? A. No.

Q. Dr. Shofner, have you ever participated in litigation before as a witness? A. No.



Q. What additional sources of information, that is, over and above the information you have already acquired in your many years as a historian in Florida, have you referred to to prepare your testimony for this trial? A. That is specific materials?

Q. Yes. A. I've used the journals of the Constitutional Convention in the Constitution of 1885. The statutes, that is, session laws and annotated codes as appropriate from 1885; some newspapers, *The Tampa* [18] *Tribune* predominantly, but a couple of others here and there related to specific dates. And that's about it, I guess. I beg your pardon, I've left out something. I did read Edward C. Williamson's recent published book on *Florida in the Bourbon Era*, the approximate title, 1877-1893.

THE COURT: Eighteen seventy-seven to -  
A. Ninety-three.

Q. Dr. Shofner, is there a professional methodology for the study of history? A. Yes, it's almost as broad as there are historians, but the historian has the, in our society, the disposition of being both an artist and a scientist in the sense that there has developed a body of methodology known as social science which historians apply as appropriate to their particular subject matter fields, but of course the historian is dealing with not just the past but evidence about the past and sometimes the squirrels eat up the evidence and that sort of thing so the historian's job is to immerse himself broadly enough in all the materials of a particular period and to create a record of the past, a story of the past, that being the artist side of it.

Q. Specifically I think what I'm getting at, does the [19] historian do more than just investigate the record of what appears in various documents and report those

records? Does he do more than just report? A. He certainly does. He does and must make judgments about what he finds. It's the historian's responsibility. But I think that you ought to broaden just a bit this concept of documents. The historian, of course, does deal with documents but not in a sense that we're speaking only of public documents. We deal with postage stamps, for example, and anything about the past, letters that people have written and preserved, pamphlets that companies issue about a bond sale or something like that. Newspapers are a major source of political and social history, especially in my field of the nineteenth and early twentieth century Florida, in addition to government documents and manuscripts as well. The census materials exist in manuscript for 1830 through 1880, a tremendous - that's not available after 1880, but this is a tremendous source in addition to statistical information that everyone knows about.

Q. What about oral history? A. Oral history, it's very difficult to find someone still able to give it in my period but, yes, we use oral history or evidences of oral history. Well, that gets pretty far afield. In addition to published works, secondary materials of that sort, all [20] of which, of course, has to be tested for validity, and the idea is to test one document against another with parallel information. If a newspaper is available it's good to check it against the *Journal of the House of Representatives*, let's say, or whatever it happens to be.

Q. So no one particular source, a newspaper article or a particular letter, for example, is taken on its face but must be synthesized with all the evidence to establish whatever conclusions you draw? A. Yes, that's correct.

Q. Dr. Shofner, if you were to tell how the at-large

voting in local government in Florida came about as it is today where would you begin your historical discussion?

A. It's necessary, I think, to understand not only at-large voting, the idea, but the implications of it, to begin with the ending of the Civil War, at least, in 1865, because attitudes of people at that time were influential with respect to what happened. What happened was influential with respect to what came after and patterns of attitudes of whites versus blacks and the other way around too, for that matter, were set at that time. So that's where I would begin.

[21] Q. All right, would you begin there. A. I'll be glad to. Florida was one of the, it was a very late Southern state -

MR. CATON: Your Honor, if I could interrupt for a moment, I didn't quite hear where Dr. Shofner said he was beginning his history lesson. If it was back in the eighteen hundreds I would offer an objection on the basis of relevancy, number one, because as I understood the question it was a history of the State of Florida, having nothing in particular to do with the City of Pensacola or Escambia County and, number two, even if it did I don't know what the relevance of what happened in the early or late or middle eighteen hundreds has to do with the election system today.

THE COURT: Maybe he can tie it in, if that's the basis of your objection. It might be tied up. It might go to the weight, not the relevance, as I understand it, on the first ground, and Mr. Blacksher is putting this in on the question of state policy as far as the State of Florida is concerned, I assume.

MR. BLACKSHER: Yes. We do not intend to in-

roduce any evidence not related directly or indirectly to the question of how the electoral system came about. In order to put it in historical context there will be indirect references and we feel like we're charged by the case law to develop the entire -

THE COURT: I'm going to let it in. It may show some relevance. Of course, as you know, it antedates the Fourteenth and Fifteenth Amendments. I'll let it in.

MR. BLACKSHER: Finally with respect to application to Escambia County, Judge, it should be recognized the county governments are presently operating under statewide statutes.

THE COURT: It may tie in along the way. Objection will be overruled. Proceed.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. McGovern, continue. Dr. Shofner, excuse me.  
A. As I was saying, Florida was one of the typical Southern cotton-producing states before the Civil War. After, too, for that matter. It had a population of about 54 percent white, 46 percent black. All but nine hundred thirty-two of the latter were slaves. The Civil War resulted in -

THE COURT: You say, wait a minute, the population of Florida after the war was what?

A. At the beginning of the war it was about 56 percent white and about 44, I beg your pardon, about 54 percent white, 46 percent black. There were about sixty-two thousand some-odd slaves in the state and nine hundred

[23] thirty-two free blacks whose activities were regulated by law, incidentally. Now, when slavery was ended by the Proclamation of Emancipation and the surrender of Lee in 1865, the President who had presided over the United States up to that point was killed almost at the same time. A new man was inaugurated in the person of Andrew Johnson, who chose to implement an existing reconstruction or readmitting of the southern states to the Union, to get them back to a normal situation in the Union, was the way he phrased it. He therefore appointed civil governors who registered voters and called for constitutional convention, which instituted the so-called Johnson Plan of Reconstruction in Florida. The people who wrote those, that constitution, and who acted in the first legislative session under it enacted a series of laws which came to be known popularly as the Black Codes in that they distinguished clearly between white and black citizens, and the way this came about, just as an example, a man named Anderson J. Peele, who was from Lloyd, Florida, and I think later on went to Texas and became attorney general of the state, but anyway he was not there yet, presided over a committee which was to make the laws of Florida consistent with the actions of recent years, and that meant to, of course, wipe out the old slave code and include the Freedmen into the body politic, or at [24] least into the body of free people. And his idea was that the Freedmen should be elevated to the position of free blacks before the war. And in his address to the Legislature he said, to give you an idea of what he meant by this, "There was nothing wrong with the much maligned but benevolent institution of slavery except perhaps the lack of marriage law. Therefore we should depart no more than absolutely necessary from that institution." And they didn't. This left blacks in an inferior position.

They could not testify in court except in cases involving blacks, as a case in point, and much more. This happened throughout the other southern states, and Johnson's plan of reconstruction from the executive branch was overturned by a growing group of so-called Radical Republicans in the Congress. They were able to stop Johnson's plan and replace it with one of their own known as Congressional Reconstruction, which dates from about March 2nd, 1867. It put a military commander in charge.

THE COURT: What date did you say?

A. March 2nd, 1867, was the date of the first Reconstruction Act. There were some supplemental ones but that's the one that was important. It provided for a military commander, major general, to be placed in charge of various districts. Florida was in the Third District. And the general was to do it all over again with the difference that oaths of loyalty had to be taken by all the registrants for the election, including all adult Negro males. And in the election which followed, let's see, there were about something like fifteen thousand black registered and about eleven thousand whites. Those are rough figures.

Q. What year are we in now? A. Sixty-eight. Well, late '67. This was completed, I think -

MR. CATON: Excuse me, could you clarify, when you say '68, we're talking about 1868? A. Yes.

MR. CATON: Thank you.

THE COURT: I will assume that's what he was talking about. Proceed, sir. I think it's a reasonable assumption. A. In the convention the delegates to the convention elected came together in January, 1868, and this is the so-called Republican Constitution, the constitution of 1868,

which was ratified in that year, and civil government was restored in Florida on July the 4th, 1868, with a man named Harrison Reed from Wisconsin as Governor. Now, [26] that constitution and the convention is very important because it was made up, the convention, of eighteen black people and the rest of the forty-six delegates were white.

THE COURT: Of how many delegates?

A. There were forty-six delegates.

THE COURT: You're speaking now of the convention that adopted the constitution of 1868?

A. Yes, sir. Of the remaining people about, as near as I've been able to determine, were what we would refer to as Conservatives and later Conservative Democrats. The remainder were a combination of white Republicans, referred to in the parlance of the time and a long time after that as carpetbaggers if they were from outside the state, federal officers or Freedmen Bureau officials who happened to be in the state for one reason or another, but a good many of them were local people, native whites or people who lived a long time in Florida, referred to as scalawags. That was a defamatory term. But they didn't agree on the kind of state they wanted and through some very extraordinary procedures, including secession from the convention, a group of moderate white Republicans wrote a constitution which guaranteed white government in the State of Florida under this reconstruction law. Harrison Reed, for example, commented on it to a prominent [27] democrat that, "we have saved the state for the white people." The way they did this was to apportion representation not according to numbers but rather more according to space.



Q. You mean the legislature? A. In the legislature.

THE COURT: According to what?

A. According to geography, in that each county must have at least one representative in the lower house and no county more than four. The population of Florida was arranged so that had it been numerically proportional Leon County, for example, would have had seven members in the lower house and the four counties on the lower end of the state except Monroe, let's see, Dade, Broward, Brevard and Polk, Dade had fourteen voters in those days, incidentally, would have shared a representative. So by requiring each county to have at least one and no county more than four, the people who wrote the constitution guaranteed that the white counties would dominate the lower house and the Senate districting was similar to this.

Q. Were there some black counties at that time, majority black counties? A. There were ten counties in the northern part of the state, namely the old cotton belt, plus Nassau and Duval in the northeastern corner which had, all these had a majority of black people in them, and not [28] only that but the majority of black people in the State of Florida lived in those ten counties. So you have, there are a total of thirty-nine counties. The other twenty-nine then had white majorities and so people in the twenty-nine white counties wouldn't always have the same kind of desires with respect to representation that the people in those ten northern counties had.

Q. How was black control of the local government in the counties secured under the 1868 constitution? A. That was the other provision of the constitution. They wrote a constitution that gave the Governor power to appoint every officer in the state except local constables, including all the court officials, all the cabinet members,



all the county officials and community officials except local constables. A voter under this constitution would vote for a constable, a member of the House, member of the Senate, Governor, Lieutenant Governor, and that was it. So with the election of Harrison Reed, who was a member of this moderate group, they had pretty close control of the state then. But the Republicans weren't able to build a cohesive party. They soon were fighting among themselves and pretty much discredited themselves in the state over the next eight years so that in a very close election [29] and one in which the national presidency was at stake involving Republican Rutherford B. Hayes versus Samuel J. Tilden, and Florida's vote was decisive in the outcome of that election, some bargains were struck by which the Republican candidate was allowed to take the presidency. Hayes was seated. A Democrat, George F. Drew, was seated as Governor of Florida, and this was hailed as the redemption of Florida, the restoration of home rule and that kind of thing. Hayes had agreed to withdraw troops from the South in general, not just Florida. They left voluntarily in Florida on January 19, but there still were troops in Louisiana and South Carolina. He agreed to withdraw them and he did. When he did, the Republican administrations in those two states fell and that was the last time that federal troops were used in the South with regard to Reconstruction laws. After this in Florida there were some very close elections but the very powerful governor's office, you see, was now in the hands of the Conservative Democrats. He appointed, for example, county commissioners. The county commissioners established the polling places and handled the election machinery and it was fairly easy that way to manage to get majorities. But as that happened year after year whites in the state became more distant from reconstruction or less fearful of a return to Republican or black rule, as they call it.

[30] Q. What was, was the 1885 constitution the first constitution of the so-called Redemptionists? A. Yes, it grew out of this. It took a while because there were a lot of people who didn't want to risk calling together a constitutional convention, especially the whites who lived in those ten counties dominated by black majorities, but there were twenty-nine other counties who had most —

MR. CATON: Your Honor, excuse me. If I could interrupt again at this time, we feel that most of this testimony is irrelevant so I haven't made several objections when I could have.

THE COURT: You want a continuing objection? I note a continuing objection to the relevance of this till such time as you state.

MR. CATON: Yes, but I would like to state one more objection at this time, if I could, and that is when Dr. Shofner starts expressing opinions such as the one he just did here about the whites that lived in the ten counties that were predominantly black, now, before he states an opinion as to what those people did like or didn't like I would like to know the basis for him arriving at that opinion. The facts that he states I don't mind but when he states opinions like that —

[31] THE COURT: You may ascertain that on cross examination, if you wish to do so.

MR. CATON: Well, I would like to object to him stating such an opinion.

THE COURT: The objection is overruled, sir. I note a continuing objection to relevancy to keep you from jumping up and down until such time as you withdraw it.

MR. CATON: Yes, sir.

THE COURT: And overrule it, unless I change my mind. Proceed, sir.

Q. The 1885 constitution then, Dr. Shofner?

A. Okay, it's considerably more than opinion but there was a good deal of discussion in public, in private and elsewhere among members of the Conservative Democratic Party from these ten counties I referred to and their colleagues in other counties. They were going to call for a constitutional convention in 1882. It was defeated. There was a call for a constitutional convention in 1884 and it was approved by something like a four to one majority. Anyhow the convention met in the summer, early summer of 1885, and the objections of the white people in the northern counties, the black majority counties, was met by a provision in this constitutional document that reduced vastly the powers of the Governor, made most officers in the state elective but continued the appointment of county commissioners.

[32] Q. By the Governor? A. By the Governor. It also added a provision for a poll tax, and of course ultimately the poll tax was implemented. This was ratified at the next general election by a vote of about thirty-one thousand to twenty-one thousand roughly. Then under that new constitution the poll tax law was implemented in 1889 and you can see pretty much from the voting, the election figures of 1888, 1890 and '92 what the effect of that was. In 1888 a Democrat won the Governor's office. Francis P. Fleming got about forty thousand votes and a Republican named B. J. Shipman got about twenty-six thousand votes. In 1890 there was no gubernatorial election but a statewide Comptroller's race saw the Republicans getting forty-seven hundred votes, forty-seven hundred eleven, I think. In '92, the next gubernatorial election, the Republicans didn't put up a can-

didate. A Populist ran and he received something like eight thousand votes as opposed to roughly twenty or twenty-five thousand for the Democrat, Henry Mitchell.

Q. Are you making a point with suggestion to black disenfranchisement? A. I'm suggesting the passage of the poll tax law, the implementation of the so-called eight ballot box law which came at the same time, by which the [33] ballot boxes were marked according to names and offices of the candidates, and people had to put the ballot in the right box in order to have it counted, which was to some extent, I suppose, a literacy requirement, it being very difficult for a person to get the ballot in the right box if he couldn't read, had the general effect and was intended to have the general effect of making it more difficult for blacks to participate in the voting process. And those figures I've mentioned are suggestive of the degree to which they did have that effect.

Q. Is it your contention then that blacks were largely disenfranchised by sometime in this period, 1890 or '92?

MR. CATON: Your Honor, I will —

A. Largely.

MR. CATON: We've got a witness who can testify. Mr. Blacksher doesn't need to. I would prefer him not ask leading questions to an expert witness.

THE COURT: That objection will be sustained. Mr. Blacksher, don't lead your witness.

Q. What evidence of black voting was there after the passage of the poll tax and eight ballot box rule, Dr. Shofner?

[34] A. What evidence of black voting?

Q. Yes, sir. A. Well, the opposition party could

only get a few votes and the opposition party tended to be the party that got the black votes. So that's the evidence that I see, that they got a few thousand votes throughout the eighteen nineties and it went even lower with the early nineteen hundreds. Also the entire number of votes went down in the early nineteen hundreds.

Q. Do you have an opinion as to how many black voters there were by 1892? A. Less than four thousand.

Q. As opposed to how many were there, say, ten years earlier? A. Around twenty-seven or eight thousand.

Q. Had that four thousand number changed appreciably by 1900? A. It continued to decline. By 1900 the election figures you get, you've just about got to go to the Secretary of State's office to find them. Very rarely did they even bother to record the specific numbers because nobody doubted the outcome. But it was a diminishing number. But a few blacks continued to vote right on through, through the early nineteen hundreds.

Q. Dr. Shofner, how did the all-white closed [35] democratic primary develop in Florida? A. It started spontaneously in some counties in the eighteen eighties and of course this was going on about the country as well. Some of the counties in Florida picked it up. It became a more favorable thing as the eighteen nineties passed, and in 1897 the Legislature passed a permissive law allowing those counties which chose to nominate their party candidates by primary. Then the Democratic Party ruled in August, 1900, that the Democratic Party would be made up of those people, and it spelled out who would make, who would qualify as a voter. It would be people who had been able to demonstrate that they voted the democratic ticket in the past, national and state, from top

to bottom, I believe, was the way it was phrased. There was a constitutional amendment in 1900 that was passed by the 1899 Legislature, voted on and approved in 1900, and in the election of 1900 the party had agreed that, "We will allow, although it's not yet constitutional, to have the choice, the Governor still appoints them, but the party will hold the primary and the people who win the primary will be appointed by the Governor and affirmed by the Senate." And they were. Then in 1901 a mandatory primary system passed. That's the first time that you have statewide primary voting by law.

[36] Q. You mean the law passed, the primary law passed in 1897 was not mandatory? A. It was permissive.

Q. By county, you mean? A. By county. Nineteen one was mandatory.

Q. Let's talk at this point and talk specifically about how county commissioners and members of the Board of Public Instruction were selected during this period, let's say from 1885 when the new Redemptionist constitution came in. It provided, I think you said, for appointment by the Governor? A. Yes. The law of 1887 enacted that provision in a constitutional provision.

Q. That was the county commissioners. How did the 1885 constitution deal with school boards, Boards of Public Instruction? A. There was law in 1889 that made them elective and in 1893 that made them elective by districts.

Q. The 1889 law did what? A. It changed them. They'd been appointed.

Q. By whom? A. By the Governor. The 1889 law made them elective from the counties and then the 1893 law made them elective by districts.

THE COURT: You mean single-member districts?

[37] A. Yes, sir.

MR. BLACKSHER: May it please the Court, with respect to the 1893 law there's some disagreement between the parties whether it was 1893 or 1895. We have a copy of the 1893 Act.

THE COURT: If he says it's 1893, they can agree with it or they can come in with evidence. It's pretty far back anyhow.

A. A law in 1895 was relevant perhaps, though, because although the constitution of 1895 had provided for separate schools for blacks and whites, although impartial, which was a continuation, incidentally, the Reconstruction law had not provided for integration of schools, it provided for people to have integrated schools if those chose; they didn't choose. And then the 1885 constitution provided for separate schools but in 1895 a law was passed imposing penalties on teachers and administrators who had anything to do with schools that taught the races together. So that, it had been the case already, but this is the first time you have penalties. This would be one of the early Jim Crow laws as they were referred to popularly after that.

Q. All right, why did, what happened in the political scene to make it possible for county commissioners to become elective instead of appointive by virtue of the 1900 [38] constitutional amendment? A. A 1907 statute changed the election law.

Q. No, I'm sorry, you misunderstood my question. What were the changes in circumstances within the body politic that permitted — A. I'm sorry.



Q. That permitted a change from appointive county commissioners to elective county commissioners by virtue of the 1900 amendment to the constitution? A. Well, it was the diminution, vast diminution in number of people voting for the Republican Party, which meant the diminution in the number of blacks who were voting. Neither blacks as a voting group nor the Republican Party as an entity was a threat to the Democratic Party, which was verbally again and again saying that it was there to maintain white supremacy. And it does not require an opinion, incidentally, because they said it specifically again and again and again.

Q. Who said it? A. The people who were doing it, the white democrats.

MR. LOTT: Your Honor, I object to this. If it's not his opinion it's relation of hearsay evidence.

THE COURT: He's basing his opinion on something that he said that he read that people said. I don't think so, [39] Mr. Lott. I think it can come on in. As a matter of fact I am not sure any of us so far have heard anything this gentleman has said with which we have any real disagreement. It's rudimentary or elementary or however you want to take it that back in the days he's talking about there were indeed Jim Crow laws and indeed these other things and these poll taxes and other things probably did have the effect and were with the intention of trying to cut down the Republican race and they were trying to get rid of the carpetbagger era in all those days. I'm just wondering why you all don't want to stipulate to this instead of objecting, if it has any relevance. I'll overrule the objection. I don't know how much you want to go into, Mr. Blacksher. You go into a lot of way back background. So far as I can tell we're not even up to 1900 yet and we've got a long way to go.



MR. FLEMING: Your Honor, pardon me, before you proceed further I just noticed a gentleman come in the courtroom at the last minute. Mr. Toney Wilson is a member of the county staff who I spoke to the Court about during pretrial conference. Mr. Wilson will likely be a witness in the case.

THE COURT: If he's going to be your witness, get him out of here. That's your obligation. And advise him of the [40] rule. Any witnesses in this room go out of this room and it's the obligation of counsel to advise them of the rule. Mr. Fleming, I want you to screen your witnesses.

MR. FLEMING: What I was suggesting, Your Honor, I was going to remind the Court that at the time of the pretrial conference we discussed the matter of the assistance of staff, Mr. Wilson in particular, and we'd ask that he be excluded from the rule so that he could both participate and assist counsel as well as testify.

THE COURT: Let's see what they say about it. I don't know about that one. Do you have any objection to that, sir?

MR. BLACKSHER: I think they're entitled to one representative in the courtroom, Your Honor.

THE COURT: Will this be your one representative?

MR. FLEMING: For the county, yes, sir.

THE COURT: All right, sir, you'll be excused from the rule.

MR. FLEMING: Thank you, Your Honor.

THE COURT: Proceed, sir.

## DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Shofner, let's change the subject somewhat. Could you tell us with respect to the black franchise what role did violence and intimidation, both economic and [41] physical, play in Florida?

A. It played eventually decisive role as the federal election supervisors and the United States Army ceased to patrol and supervise elections, but it was vigorous during the Reconstruction period itself. In fact there was so much violence in Florida, mostly in the counties where there was a large number of whites and blacks, in the counties where blacks were, say, eight to one they were pretty quiet elections and in the counties where the whites were in an overwhelming majority, the same thing, but in counties like Jackson and Madison and Columbia and Alachua and Marion where you have a large number of both, this is where most of the contention came, it seems, and in Jackson County, for example, what has been referred to as the Jackson County War resulted in about a hundred sixty-nine deaths between 1868 and 1871. This kind of testimony, nightriding by organizations such as the Klan, and incidentally, the Klan, the nightriding outfit in Florida during Reconstruction was called the Young Men's Democratic Party. They were more honest than some. And this brought about three laws by Congress known as the Force Acts in the South, of course, Enforcement Acts, which empowered the President of the United States to appoint federal election supervisors at each polling place and also to declare [42] martial law and use military force where he felt that the civil authority had been exceeded. So violence was a part of it and continued to be. Economic intimidation was out on the front.

MR. LOTT: Judge, if I may interrupt a minute, we object to this line of testimony from the witness in that it doesn't relate to anything on official level of state policy, and that's the point the historian is trying to make here, and particularly to the fact it doesn't relate to any violence or anything, he didn't mention Escambia County at all. We don't feel it's relevant to Escambia County or state policy that he's trying to prove.

THE COURT: Mr. Lott, I think perhaps to a large extent your objection is good, but overall I'm having a little problem on the violence and so forth. We're still trying to get it to state policy. That's all this is about, I guess. I don't know how much further you're going. Can't we kind of get on up? We're still not up to 1900 even. We've got a long way to go. There's not much real argument, is there, gentlemen, about the fact in the days he was talking about indeed we did have poll tax laws and we had other things. We had a period of time when we had carpetbagger government and they threw that out and in turn intimidated the blacks and tried to keep them from voting [43] through poll tax and other ways, and their vote was diluted beyond any question in those days. They simply didn't have a right to vote for many days. Is there any argument about that?

MR. CATON: Basically, no, Your Honor.

THE COURT: I could almost take judicial notice of it, can't I, it's been so well established historically?

MR. CATON: That's the basic argument, is the relevancy.

THE COURT: We've still got to come on up. Can't we move this thing up a little bit? Let's see what they say.

MR. LOTT: Your Honor, we're content to rest on

determination by the Fifth Circuit in *McGill* in 1971, by 1900 the black vote was completely disenfranchised, and we feel it's already been determined.

THE COURT: That was in Florida?

MR. LOTT: Yes, sir, as to county commissioners and school board.

THE COURT: If you want to, let's jump beyond it because you're not even contesting the fact, what you say, that the *McGill* opinion on the evidence there said they were completely disenfranchised by 1900.

MR. LOTT: Yes, sir, and they spoke to Florida.

THE COURT: How's that?

[44] MR. LOTT: The Court was speaking to Florida.

THE COURT: Speaking to Florida, so can't we move this along, sir?

MR. BLACKSHER: Yes, sir.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Were the blacks entirely disenfranchised? Were there no black voters at all by 1900, Dr. Shofner? A. There were some, a few, here and there. Duval County had a considerable number because of a peculiar situation in Duval County. But a good many counties had a few black voters.

Q. Did the violation and intimidation continue after the turn of the century; and what relevance does the violence and intimidation have to state policy? A. It's relevant among other things in that the state condoned it. As blacks were pushed out of politics what you have was a

legalization of the custom that had existed in this earlier period in that whites tended to feel themselves superior to blacks. It was proper that they be kicked out of public affairs because they weren't qualified to be there. It was a necessary thing to resort to whatever violence, whatever economic intimidation was necessary to bring about this desirable end of white control of government. But it also carried with it the legalization of the worst kinds of human [45] violence. I'm not suggesting that the decent lawmakers of the state condoned this but by leaving blacks without a place to go for redress of grievances they opened up to the worst kind of thugs some of the worst kinds of mistreatment, and this continued well through the twentieth century, at least until 1951.

THE COURT: At least until when, sir?

A. At least until 1951 when an NAACP voter registration man named Harry T. Moore was blown out of his bed on Christmas night at Mims, Florida, and killed along with his wife, her problem being that she was there with him. So there were no indictments in this case and rarely were there indictments in any of these cases. A Governor of Florida in 1919 protested to a white executive secretary of the NAACP who was named Shillady — the NAACP by that time had decided it ought to do something about the widespread lynching, and one thing it was doing was writing the Governors of the States to let them know such had happened in their state, and this was Sidney J. Catts, who was a rather outspoken one of our Governors, and he wrote, and this happened in Escambia County, incidentally, near Pensacola, and a man was taken out of a place called Turpentine Camp, I confess I don't know where that was, there were a good many turpentine camps in [46] Escambia County at that time, and he was accused of a rape, which was very often the case. He was taken

away from a sheriff who may or may not have resisted the mob. There was some discussion about that. And he was burned to death. And Shillady was pointing out to the Governor of the state this was kind of a bad way to go. And the Governor responded to him in effect, "It's none of your business, that it would be ridiculous for me to try, as you say I should try, to bring in the people who caused this man's death, because the public will not consent to that kind of behavior on the part of a governor." So it seems to me that there was a continuation of the disenfranchisement of blacks, the relegation of them to an inferior position, and the encouraging then of violence once we had got a habit of violence.

MR. BLACKSHER: With respect to the response of Governor Catts, Your Honor, the text of his telegram to Shillady is set out on page 17 of my findings. I would like to get that in evidence.

THE COURT: I don't know whether they have objection to it.

MR. BLACKSHER: Dr. Shofner provided me this telegram text.

THE COURT: Is that what you're referring to?

A. Yes, sir, it is, and in my opinion it shows a [47] continuation of what we're talking about here.

THE COURT: What is it, exhibit what?

MR. BLACKSHER: On page 17 of the proposed findings, Your honor. I could have him read from his notes what it says.

THE COURT: It would take longer to do it. Any objections to it?

MR. FLEMING: Your Honor, I would interpose objec-

tion at this time on a number of grounds, first relevancy because it deals with the Governor and in no event with the county commissioners or school board or city council and, secondly, on the grounds of opinion in that the Governor in this alleged statement is alleged to state his opinion with respect to what the citizenship would stand for. I think it's inadmissible for both of those reasons.

THE COURT: Objection on both those grounds will be overruled, if that's the objection. It will be received in evidence. Do you have it anywhere?

DEPUTY CLERK: No, sir, I don't have it.

THE COURT: Where is it?

MR. BLACKSHER: I don't know what number. Is it in your exhibit list?

THE COURT: We didn't put all the exhibits in evidence as I said we were going to do at the start.

[48] MR. BLACKSHER: I said it's in the plaintiffs' proposed findings of fact.

THE COURT: I realize that.

MR. BLACKSHER: I was just going to have Dr. Shofner read it, Your Honor, from his notes.

THE COURT: Let him go ahead and read it.

A. I didn't bring any notes with me. What I'm giving you was —

Q. Dr. Shofner, have you inspected our proposed findings of fact before and did you provide me notes, some of which I copied into these findings? And I refer you to page 17 in our proposed findings at the top, and would you read the text of Governor Catts' telegram to Mr. Shillardy of the NAACP in 1919.

A. Catts' reply in part was, "You asked me to see that these lynchers are brought to trial. This would be impossible to do as conditions now are in Florida, for when a Negro brute or a white man ravishes a white woman in the State of Florida there is no use having the people who see that this man meets death brought to trial. Even if you could find who they were. The citizenship will not stand for it."

MR. FLEMING: Your Honor, I renew the objection on the grounds that it's an inadmissible opinion.

THE COURT: Objection is overruled. Now, let's see, I [49] had both you and Mr. Lott coming to me with objections.

MR. FLEMING: Pardon me, Your Honor.

THE COURT: You all make objections together or something. I believe I've had both of you on your feet with objections.

MR. FLEMING: We'll make an effort to, Your Honor.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Now, Dr. Shofner, I would like for you to discuss in a specific category here, isolate on the history of election systems for the county commission, and let's try to put it in order beginning where you did in the 1868 constitution and let's just put it in line, how the county commission was chosen up to the present. A. Okay. The 1868 constitution provided for appointive county commissioners to be appointed by the Governor, confirmed by the Senate, along with all the other officers in the state. The 1885 constitution changed all other officers, just about, to elective, but continued the appointment of county commissioners by the Governor with confirmation by the



Senate. This was implemented by statute in 1887. The situation remained that way until the constitutional amendment ratified in 1900 that made them elective at large with the party rules of 1900 saying, "We'll go ahead and do it this was in 1900. We'll elect and [50] the Governor will, by agreement, appoint as we choose."

Q. So the primary was run at-large in 1900 as well as the general election for county commissioners? A. Primary and general election.

Q. All right, what happened next? A. The 1907 statute making county commissioners elective from districts was implemented. I beg your pardon, nominated in the primary nominating process. They continued to be elective in the general election.

THE COURT: This is the 1907 statute made them nominative?

A. To be nominated from districts by the voters of those districts.

Q. So as of 1907 we had single member districts in the primary, at-large elections in the general election, is that correct?

A. Yes. This is confirmed by a noted historian in 1936, William T. Cash, who is a revered historian over at Florida State College for Women, who wrote a history of the Democratic Party, and he makes a special point of this, that the Democratic Party by using the white primary had gone far towards purifying politics because it allowed them to exclude Negroes from the election, the only election that made any difference. The general election didn't matter after that time.

[51] THE COURT: What prevented the blacks from becoming members of that Democratic Party in those days?

A. The Democratic Party rules said you had to be white to be.

THE COURT: You had to be white?

A. Yes, and a male, of course. It was referred to as the white primary.

Q. In 1907 was in the beginning or in the midst of what is known as the Progressive Period nationally in elections. Would you just explain what that was and what it affected, what effect it may have had on voting schemes here in Florida?

A. Okay, there was a considerable unrest throughout the country which led to demands for getting the people more directly into the political process. There were calls for direct election of United States Senators and the right to initiate legislation and call up judges on recall provisions and to call up legislation which had been passed for what was called a referendum, and many other things. Women's suffrage was considered. They wanted to outlaw alcohol throughout the nation. And it was a widespread demand throughout the country for the county commission form of government, I mean the city commission, excuse me, city commission form of government was part of this move. It included the [52] secret ballot or Australian ballot, which was being implemented throughout the country.

THE COURT: Are you going to bring him to county commissioners? You started on this. Are we getting away from this and into background? Is this what you want him to do?

MR. BLACKSHER: Yes, sir.

A. I'm sorry, I thought —

THE COURT: The question was to come on up to date and give us the sequence on county commissioners.

Q. I'm sorry. County commissioners, 1907 was where we left off on the chronology of county commissioners. I apologize.

A. That is really the last thing that was done in Florida as near as I've been able to determine with regard to county commission elections until 1954. It remained that way.

Q. How long did the white primary last?

A. The white primary lasted until 1945 in this state.

Q. *Smith versus Allwright* was —?

A. Nineteen forty-four. It was followed by *Davis versus State of Florida* with respect to a suit from a man named Esau Chavis, a resident of Escambia County. The state intervened in this case.

[53] Q. All right, sir, and after the end of the white primary at that time were county commissioners still elected in the primaries from single member districts in 1945?

A. Yes.

Q. And then when did the election system next change?

A. It seems to me there were twenty-nine, about twenty-nine at any rate, counties, which had gone to at-large by special legislation.

THE COURT: By what date?

A. By 1954, between the late forties and '54. The '54 *Ervin versus Richardson* case decided by the Supreme Court mandated at-large elections by declaring the 1907 statute unconstitutional. So it was uniform throughout the state after 1954.

Q. Have there been any changes in the method of elec-

ting county commissioners either in primary or the general election since the 1954 *Ervin versus Richardson* case?

A. Have there been changes?

Q. Yes, sir. A. If so it's on an individual basis. As far as I know there haven't been.

Q. All right. Now, with respect to the school board [54] elections could we do the same -

THE COURT: Just a minute. The county commissioners, you say, since 1954, so far as you know they've just been all at-large elections for county commissioners?

A. As far as the state policy is concerned. There hasn't been any change at the state level.

THE COURT: But also - A. Are you talking about the local -

THE COURT: I'm talking about county commissioners on state policy. State policy at that time was at-large elections without primaries? A. Oh, the primaries were made, the 1907 law which had allowed or required the nomination in primaries -

THE COURT: It was knocked out by the court decision? A. Knocked out by the court decision.

THE COURT: From that time on up you have at-large elections. A. At-large.

THE COURT: Without primaries? A. In the primaries. It doesn't make much difference in the outcome from 1954.

THE COURT: But also that law, when did it put into effect the requirement that county commissioners, that they had to run from and come from different, we had the

[55] residence requirement where they had to be residents of various districts. A. They'd always been required to live in the districts they represented and still do.

THE COURT: It's always been that way? A. It was in that early law, 1887 or, yes, they've always had to represent a district.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. You mean even when the Governor was appointing them? A. He appointed them from districts. That's been consistent, I think.

THE COURT: All right, sir.

Q. Could we do the same thing now, Dr. Shofner, with respect to school board elections. A. Okay. The 1885 constitution did put Florida, the State of Florida, in the business of supporting a public school system and it provided for the establishment of county, what do they call it, the superintendents, what was the commission called, it was a school board.

THE COURT: Trustees?

A. The trustees, right.

Q. Are you talking about the trustees or the boards of [56] public instruction? A. Okay, the Board of Public Instruction is the term I was having trouble recalling there. We've changed all that now.

THE COURT: The Board of Public Instruction wasn't provided for in the constitution of 1885, was it? A. Boards, a state superintendent and county boards.

THE COURT: Trustees? A. They may have used the term trustees. I'm not sure.

THE COURT: Let's go along. I think it was trustees and came by legislation to the board later. A. It's a school board anyhow.

THE COURT: All right, sir.

A. And in 1889 then the school board members were made elective at-large from residence districts or they had to live in the district from which elected. In '93 they were made elective by the voters of the district from which elected. No I beg your pardon, that's not correct either.

Q. Now, the notes that I had — A. Yes.

Q. The 1889 Act was appointive. A. That's the step I left out. Eighteen eighty-nine made them appointive, [57] that's right, and '93 made them elective but elective at-large. I got ahead of myself. And then in 1907 at the same time that the county commissioners were made, that is, they were allowed to be nominated in the Democratic primary from districts, the county school board members were also made.

Q. Okay, once again that's somewhat inconsistent with my notes, which say that there was an appointive provision in 1889 and in 1893 local counties were allowed to elect their school board but they were from single-member districts. A. Elected at-large, weren't they?

Q. Well, we have the Act. A. Okay.

Q. So we will provide the Court with the Act and I think it says single-member districts.

THE COURT: You're talking now about law and I'm going to let you get into it. I may be wrong. I think there's

a slight mixup. I think what he's talking about is they went to the old trustee districts and when they said they would come from the districts they would have several trustees districts within a county.

A. Within the county, that's right.

THE COURT: And that they were elected or appointed from the particular districts. Somewhere along the way, of course, they came along and we had a Board of Public Instruction by general law and got into something else, but [58] for a period of time still had the trustees in the districts but they finally were done away with. I believe it's something like that.

A. They were allowed in the late eighties, people in subdistricts could vote to subject the trusteeships, and that lasted apparently to the Minimum Foundation Law.

THE COURT: It lasted a long time. They got away from it in Florida because they created the Board of Public Instruction. You're the historian but it's my understanding that distance had a great deal to do with it in those days.

A. Distance, that's correct. That's why the subdistricts were created.

THE COURT: And more and more you had one body you needed for the county. It didn't have much to do with race. That didn't have much to do with it. Am I wrong in that?

A. No, sir, I think that's a major reason for it.

MR. BLACKSHER: May I approach the bench? These are copies of the 1889 and 1893 statutes.

THE COURT: I'll take them but I think really we need to get beyond this. All you're saying, doing so far, of

course, you had a pretty well pattern in the South in way bygone days, and bringing it up to date. You're getting [59] closer but you've got this thing to 1907 on the school board trustees and so forth and haven't brought it up to date, come to think of it, have we?

MR. BLACKSHER: Your Honor, perhaps I should explain myself on where we think this evidence is taking us, the theories. Would that be helpful at this point?

THE COURT: I think I know why you're trying to bring it in and you're getting closer but I just realized all the discussion was in 1907 on the trustees and the school board, I think. We didn't let him bring us up to date. I think he was a little mixed up.

A. I got ahead of myself.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Go ahead, Dr. Shofner. A. This situation remained constant through 1919. There was a condification of the laws and annotation and another in '27 and in '39 another, all of which kept the electoral system of the school boards the same. And then in '47 after the white primary was done away with in Florida but also at a time when the Minimum Foundation Program, the large overhauling of the state system financing education and other things was passed, in that 1947 statute the school board members were made elective at-large. Or I keep mentioning -

[60] THE COURT: Just a minute, sir. Are you telling me school board members at-large were not made elective at-large until 1947?



A. I've used the wrong term. The Democratic primary has been used as the election and I've fallen error to the same thing. They had always been elected at-large in the general election but they were made to be nominated from counties at-large in 1947.

THE COURT: Are you sure they were not nominated in primaries at-large before that time, sir?

A. Yes, sir.

MR. BLACKSHER: Single-member districts.

THE COURT: They weren't nominated from districts before that time; they were nominated at-large. In the primary they went at-large before that time, didn't they, in the primaries?

A. Not to my knowledge.

THE COURT: Before 1947?

A. Not before 1947. From 1907 to 1947 —

THE COURT: From 1907 to 1947 they went what in primaries? At-large?

A. The primary was from districts from 1907.

THE COURT: I may be wrong but I think we're still confusing trustees and board members. Do you know that [61] much about this?

MR. RAY I'm still confused, Judge. I don't know.

THE COURT: Well, I'm going to get him, we'll let him, I'm going to get him to check it. I think there's a little confusion. I may be wrong. My recollection, and I may be wrong, I was old enough to be voting back in those days; I don't remember it like he said it. I remember school board

members were nominated and elected from the county at-large with the trustees, they might have been elected at-large but they were nominated, and after a while the trustees went out and finally got around to the constitution and it served a useful purpose.

A. I had been under the impression that those sub-districts were done away with in '47.

THE COURT: Well, I've forgotten just when they were.

A. I thought that law did it and made the county the school district from '47 on.

THE COURT: No, sir, I think it came a little later there but they did get rid of them a little later in the change in the new constitution, as I recall. I'm not sure. Go ahead.

MR. BLACKSHER: Yes, sir. In bringing copies of the statutes we'll try diligently to —

[62] THE COURT: Maybe at a recess or something you all can look at the statutes and see what they were. That will be fine, sir. Or let him look at them and then he can be positive about it. But anyhow now we come on. We came on up and in 1947 according to what we have we're getting, we're nominating from districts but electing at-large. Is that right?

A. MR. BLACKSHER: Until 1947, and then in 1947 at-large, both primary and general. The Minimum Foundation Act changed the district elections in the primaries to at-large elections.

THE COURT: All right, sir.

## DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Shofner, I would like to ask you if in your expert opinion, did the concept of white supremacy and dilution of black voting strength play any part in the reestablishment of at-large voting in the primary elections for county commission and school board elections as you have testified? A. I think so.

THE COURT: In the establishment of at-large elections, you say?

A. Yes. Q. Would you explain yourself, please.

[63] A. Well, the local voting for representatives was acceptable in the state down to the time that, here again I'm speaking of the nominating process in the Democratic primary, was acceptable until there was a threat to the white primary. It was outlawed by the national court in '44 and by the State of Florida Supreme Court in '45 and it's been since that time that voter registration drives have been inspired and resisted and it's been during that time that we changed back to at-large elections, that it has come back in both the school board and county commission level. Mr. Cash, the historian of the Democratic Party in '36, talked about good government in terms of cleaning up the electorate by keeping blacks out of it. I think that that is more satisfactory to a person to say than to say, "Let's disenfranchise blacks." It's just in the same case it was a lot better to talk about protecting the rights of the states versus incursion of federal Supreme Courts, say, about the time of Earl Warren and the *Brown* decision in 1954 than it was to talk about discrimination against certain categories of people. And in that sense good government meant a good many more things than just getting rid of

wards, as the people in Tampa were talking about, and that sort of thing. Yes, I think there's a correlation between the opening up of the possibility of [63] blacks voting in the electoral process, in that part of the electoral process which counted, the Democratic primary, and these changes.

MR. BLACKSHER: That's all, Your Honor.

MR. CATON: Your Honor, would you prefer our cross to be conducted here or at the podium?

THE COURT: Over at the podium, Mr. Caton. You'll always feel better standing on your feet when you address the Court, Mr. Caton.

MR. CATON: Did the Court wish a recess now

THE COURT: I'm willing to take a short recess, I thought maybe you want to finish the witness and recess for lunch.

MR. CATON: If we could take a short recess.

THE COURT: You want a short recess?

MR. CATON: Yes, sir.

THE COURT: Court will be in recess for about ten minutes.

(Recess)

(Open court)

THE COURT: Let's see, who's going to proceed? You may proceed, Mr. Caton, on cross examination.

MR. BLACKSHER: Your Honor, before the cross examination begins, and if you please, we have, as you instructed, gone over the statutes, and Dr. Shofner has them [65] in front of him if you would like to go over that point on the school board.

THE COURT: Well, all right. Mr. Caton, let's let him finish up and put it right with you.

DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Go ahead. A. The 1889 statute, I was correct on that, it did refer to county boards of public instruction. And —

Q. And they were appointed under that? A. They were appointive, yes, and then the '93.

Q. Who appointed them, by the way? I don't think that's clear on the record, Dr. Shofner. Who does the statute say appoints the Board of Public Instruction in 1889? A. Shall be appointed by the State Superintendent of Public Instruction, State Board, no, I beg your pardon, it's the Governor. I know it's the Governor because there was a big battle in 1917 between the Governor and the Superintendent of Public Instruction.

Q. What does that statute say? A. It doesn't say.

Q. Okay.

THE COURT: We can look at the statute later. Go [66] ahead and tell us the rest of it. Go ahead.

A. It's not manifest.

THE COURT: All right.

A. Anyway it's appointive, and the '93 version still refers to County Board of Public Instruction and makes them elective. In '95 —

Q. How are they elective in '93? At-large?

A. At-large.

Q. At-large or from districts, Dr. Shofner? Would you read it?

A. Well, yes. An Act to provide for the division of counties —

THE COURT: I can look at it.

MR. BLACKSHER: Judge, it's marked in there.

THE COURT: If that's all law I could let you all get together without taking his time afterwards, if that's all we're doing. It says for the election of three trustees therefor.

A. That's the '95 law. That's the one you're referring to.

THE COURT: I guess so.

A. The '93 Act is an Act to provide for election of members of the County Boards of Public Instruction and fix their compensation.

THE COURT: Which Act?

[67] A. That is '93, and the '95 one adds the trustees that you're talking about from the subdistricts.

MR. BLACKSHER: May I approach the bench, Your Honor, and shortcut this?

THE COURT: Yes. I would like, we're just talking about those laws and you all have them here and we can see what they say and don't have to take his time trying to fumble through and read those things.

MR. BLACKSHER: Would the Court permit to put in the record what it shows so there won't be any further consideration.

THE COURT: It will be fine. I'll tell you what; I'll let you go to noon recess and you all get together and there

should be no problem and if you have a problem, come to me with them and let me look at them. You all should be able to agree on what the laws say without taking the witness's time.

MR. BLACKSHER: Thank you, sir.

THE COURT: Cross examination now, Mr. Caton?

MR. CATON: Yes, Your Honor.

### CROSS EXAMINATION

BY MR. CATON:

Q. Dr. Shofner, could we clear up one point, please, sir. Back in the late eighteen eighties, I guess it was, I believe you stated that's when blacks were [68] effectively disenfranchised. Is that correct, sir.

A. Yes, that's about right. The statutes that led to it were 1889.

Q. Eighteen eighty-nine?

A. Yes, sir.

Q. So I believe there were some, also some provisions in 1885, were there not, some provisions in that constitution that provided for the methods of disenfranchisement?

A. Yes, sir.

THE COURT: Mr. Caton, since he gave us that testimony it's now stipulated, I think, by all people, that as late as 1900 they were effectively disenfranchised.

MR. CATON: Yes, sir, I understand we stipulated that. I was just trying to pin it down a little bit more, if I could, Your Honor.

THE COURT: Well, all right, sir. I don't know, with that on the record I don't know why you need to come with any more, but go ahead.

A. The 1885 constitution provided the Legislature power to enact a poll tax requirement as a precedent to voting, and the 1889 Legislature did it.

Q. So would it be a fair statement then by the year 1889 that blacks were effectively disenfranchised?

A. Yes. The next statewide election suggests [69] that that's the case. Yes.

Q. So you would agree to the statement, I guess.

A. Yes.

Q. Could I ask you one question in general, please, sir, getting back to your general method. You're what we call a historian and as I understand your answer to counsel you not only report facts but make judgments yourself. Is that correct?

A. Yes, sir.

Q. And what do you use to base your judgments on? A. All the evidence you can find on the subject.

Q. And that includes newspaper articles as well as books, periodicals, magazines?

A. Yes, yes. Government documents.

Q. What did you mean when you said oral history? A. It has been, it has become a feature of historical research in recent years. A man named Alan Nevins of Columbia University set up an oral history project and it's caught up all over the country now to, instead of waiting till somebody is dead and then seeking out their record, to interview people of importance and to get their testimony on the record and then this material is handled in, it's a very intricate thing. It has to be edited and the man goes back and approves or changes it and [70] he also controls when it can be used and where and that kind of thing. That's what oral history refers to. We've always, of course —



THE COURT: I think you've answered the question, Doctor.

A. Okay.

Q. So what we're talking about is somebody will interview a person that has knowledge of certain facts?

A. Yes.

Q. And he will — he in turn write them down or pass them along orally to the next man? A. I was speaking of, directly to the former case. Interviews would be recorded at the time and transcripts would be made.

Q. So it would be a written synopsis of what a man said? A. Yes.

Q. And your newspapers, I believe you stated they're a major source of material in your research. How do you go about that? Do you just check the newspaper files? A. Yes.

Q. Of various newspapers? A. Yes. They've been saved from the earlier period just about like everything else, kind of spasmodically, [71] so we don't have complete runs of some and some have disappeared altogether, but there has been a kind of a scattergun approach to saving the materials and those that exist, yes, we just —

Q. So you can get what you can? A. You get what you can, that's correct, and if you're looking for a specific piece of material, of course you go to those dates, but I was mainly referring to the fact that in most of my research I've simply read the newspapers from beginning to end to get a feel for the time and that kind of thing.

Q. How do you go about choosing which newspapers, say the *Tampa Tribune* as opposed to the *Jacksonville Bugle*? A. In that particular case it was easily available

and it was not a particularly debatable point. It was simply direct reporting.

Q. As opposed to an opinion? A. Opposed to an opinion or editorial or something of that nature.

Q. Do you also sometimes check editorials for opinions? A. Yes, sir.

Q. And what credence do you normally place in them? A. It depends on what the issue is.

[72] Q. It depends on the issue? A. Sure. Newspapers, like law and custom, interact with the body politic that they serve. They instruct and they are instructed by.

Q. In your research do you fairly often run into these editorial type opinions from newspapers? A. On the editorial page indubitably.

Q. Do you find that the opinions sometimes vary from one paper to the next depending on who's writing the article? A. And also depending on the issue.

Q. Depending on the issue? A. On the particular issue we have here, not very much dissent from white newspapers.

Q. Do we not find quite often, though, that depending on who's writing the article you might have a different opinion on the same issue? A. When?

Q. Well, you've done the research. You tell me. A. Well, there's a different answer depending on —

THE COURT: He's already testified that there was pretty much unanimity.

Q. So your answer would be it depends on the issue? A. Yes. There was common agreement among

newspaper editors, white newspaper editors, in this early [73] period, about the necessity of white supremacy.

Q. Yes, sir, in the early period. Let's say, for example, we had a later period where maybe there was a little more disagreement. Would you expect to find perhaps different opinions from different newspaper editors depending on who's writing the editorial?

THE COURT: You're asking him what he might expect to find, sir? You're going pretty far out on that, Mr. Caton. Don't answer that.

MR. CATON: Well, the man has testified he has done research.

THE COURT: Yes, but you asked him what he might expect to find on his approach to research.

MR. CATON: I asked him about a different issue than the one he was particularly speaking to.

THE COURT: I've instructed him not to answer that question.

Q. Okay, are you familiar at all with the change in the electoral system made in the City of Pensacola in 1959? A. I have done no direct investigation of that. I've heard about it from other people.

Q. I believe you stated that the change in the method of electing school board members was in 1947 to make [74] them at large. A. Yes, nominating process. The nominating process.

Q. Yes, sir, the primaries. A. We all make that same mistake.

Q. We get confused. Did you or did you not state that there was any correlation between that and the end of the white primary in 1945? A. It certainly appears to be a correlation. The *Davis* case was decided in 1945.

Q. There appears to be a correlation? A. And the next legislative session was in 1947.

Q. This is something that you have studied and read and you've formed an opinion which says it appears to be? A. Yes.

THE COURT: Let me be sure about that, sir. From your testimony I gathered or I assumed, at least, that your opinion was based purely on that sequence of events and nothing else. Is there some other basis for your thought? A. Well, the entire framework of the mid-nineteen forties in Florida and the South. You had Strom Thurmond who broke away from the Democratic Party because the [75] National Democratic Party included a plank calling for a fair employment practices commission. At the same time there was a difficulty in whether they would be allowed to be considered a major party or not and therefore get on the ballots in the states, and the Legislature called itself or the Governor called it into session in September to provide for a specific inclusion of the States Rights Party on the ballot in the state, among other things.

#### CROSS EXAMINATION RESUMED

BY MR. CATON:

Q. So there are some generalities? A. Yes.

Q. Strom Thurmond from South Carolina and other things happening around the country, and you felt this may fall into that pattern? A. I think it's a little bit stronger than "may." I think it did, and the Legislature went to considerable effort to demonstrate that by allowing this particular party to get itself on the ballot so Florida Democrats who didn't wish to vote for Harry Truman would have an opportunity to express their thoughts.

Q. But you have no specific evidence other than your own conjecture? A. Well, the evidence I have is the calling of the [76] legislative session and what that Legislature did. That's what I meant by that.

Q. Was this a special session or a regular session? A. That is a special session, September, 1948.

THE COURT: The Legislature had a special session in 1948? A. Yes, sir, they called themselves in because under the election rules this States Rights Party didn't meet the standards necessary to get on the ballot and so they went to some extra effort to get them on the ballot that year.

THE COURT: Get who on the ballot?

A. Get the States Rights Party. It was commonly called the Dixiecrats, but the States Rights Party, I think, was the official title of it.

THE COURT: You're not talking about — how is that correlated to —

A. The correlation, sir, as I see it, sir, is this, another example of Floridians favoring white government and becoming disenchanted with the National Democratic Party, the solid South to which Florida has aspired for nearly a century as the white man's party. Now the white man's party is beginning to talk about fair employment practices commissions and antilynch [77] legislation which has been introduced in the House of Representatives since at least 1921.

THE COURT: Doctor, you're getting me a little confused. I thought you had said there was a correlation between the decision in 1945 and the 1947 change in the Florida Statutes and part of that reason for that was the special session. Yet you say the special session was after that.

A. The attorney asked me, though, if I made my opinion on the simple basis on the fact that *Davis* occurred in 1945, and the Minimum Foundation Law changed the nominating process to at-large, and I said there was more to it and this is the kind of thing.

THE COURT: The sequence we're talking about, these decisions or whatever it was came out in 1945, you said.

A. Yes, that was the Supreme Court.

THE COURT: Then in 1947 the Legislature changed it to an at-large? Is that what you're saying?

A. Yes.

THE COURT: But you also said something about a special session.

A. The next year.

THE COURT: In what year was that?

A. Forty-eight.

[78] THE COURT: All right.

A. That's what I meant. It's collateral. That's what you were asking, was there any collateral information.

#### CROSS EXAMINATION RESUMED

BY MR. CATON:

Q. You made a statement when Mr. Blacksher was examining you that around in the nineteen hundreds there were some more changes such that the Republican Party was no longer a threat to the Democrats. Would you elaborate on that again for me. A. Well, as blacks were disenfranchised there was no body of support for the Republican Party. There were a few hundred white Republicans in the state. The largest enclaves of them were

in Duval County and in Orange County. Orange had been populated by much more recent immigration and had a little nucleus of a Republican Party there, and Duval had one from, existing since the post-Civil War period, but basically the Republican Party was supported by black voters.

Q. Yes, sir. A. And when the black voters were prevented from voting, that's what I meant.

Q. Well, when did this become a threat subsequent to that time? A. There are people who would argue that they [79] haven't.

Q. Which people would argue that they haven't? A. The people who've been looking at the Legislature and counting how their numbers have gone down since 1967's high point. The 1928 election brought about an aberration, I think, in national, but certainly in Florida politics, because the Democratic Party, the Democratic Party voters in Florida were being asked to vote for a man named Al Smith who didn't look much like their kind of man and they voted for Herbert Hoover, who didn't either, but he looked more like it than Al Smith, and except for that particular aberration in which no county, so far as I know, went for the Republicans by a majority, but where the Republican vote was increased considerably, except for that 1928 aberration the Republican Party has not become a major threat in a statewide election until, of course, Claude Kirk pulled off that 1966 event.

Q. So if they weren't a threat after early 1900 there was no need to pass any laws to continue to have that effect since there was no problem involved? A. No, that's what allowed the district election to be so convenient. You have local control.

Q. Your answer was no, that there was no need to? I'm sorry. [80] A. I said that's right, they didn't have to worry about an opposition party.

Q. Yes, sir. Okay, could I ask you concerning some of your testimony regarding lynchings and other violence. I believe you said this was legalized, the legalization of a custom. Could you tell me which laws and other legislation made these lynchings and violence legal? A. There was no law saying it was all right for one man to lynch another.

Q. What do you mean by this? A. I mean by 1915, beginning about 1895, a series of laws collectively called Jim Crow Laws, that's a fairly common term in our society and my profession, dealing on the one side with punishment for people who participated in integrated schools, to the forbidding of sheriffs and others handling prisoners from handcuffing blacks and whites in the same handcuffs to, in that 1907 session —

Q. What does this have to do with making lynchings legal? A. It had to do with it in that it left blacks completely separated from white society, whites and blacks in that state except in a master servant relationship could live out their lives without ever coming into contact with each other, and the state officials condoned [81] without law the lynchings.

Q. I think we're all aware that even the Supreme Court said separate but equal in the schools was legal. What I'm getting at is not that, but you, maybe I'm wrong, maybe I wrote this down wrong, but I understood you to say that these lynchings and other violence that Mr. Blacksher was asking you about, you said this was the custom that became legal.



THE COURT: No, sir, he didn't say that. A. That's not what I said.

Q. Well, I apologize.

THE COURT: He said it was condoned.

A. I had given the one example of Mr. Catts. I could give you several dozen more.

THE COURT: You've already gone over that pretty well for us. Go ahead, Mr. Caton.

Q. Could you again tell me what period of time your research covers mainly? A. My most extensive work has been in the period, the last fifty years of the nineteenth and first twenty of the twentieth century.

Q. So through about 1920? A. Eighteen fifty to nineteen twenty. I've done an awful lot of reading before and after that but that's the area that I have done my publishing in mostly.

[82] Q. Has any of this research been specifically in the City of Pensacola or Escambia County? A. Not for that reason, but of course I have read the Pensacola —

Q. Not for the reasons that you've testified? A. No not for the reason of finding any specifically, in Pensacola and Escambia County, but Pensacola was a very prominent city in Florida during that period.

Q. We hope so. A. Right. It was. And of course the newspapers here and the shipping registers.

Q. I believe you did some research with black stevedores. A. Yes. That I ran onto when I was working on my Reconstruction book and also the lumber industry; I've done considerable work just on the lumber industry itself and they sort of crossed there in 1873 when —

Q. But that's, excuse me, that's pretty much the extent of your research done in Pensacola and Escambia County, is with relationship to black stevedores and lumberjacks?

A. That kind of thing, but as incident to broader research.

Q. As incident to what broader research in [83] Pensacola and Escambia County? A. In the State of Florida, of which Pensacola is a contingent part.

Q. So the answer to my question as far as Pensacola and Escambia County is concerned, the extent of your research has been with some black stevedores and Canadian lumberjacks? The rest of your research has been in other areas? A. No, that is not true. There are others.

Q. Tell me about it. A. I can tell about Stephen R. Mallory, the Secretary of the Confederate Navy, who lived here and fought a duel with Mr. William Kirk, a newspaper editor, over some racial matters. Mr. Kirk chickened out so it didn't come about, but other things like that.

THE COURT: You don't have any other evidence of dilution in Escambia County other than what you've testified? A. That's right.

THE COURT: That covers it for you generally, doesn't it, Mr. Caton?

Q. Okay, thank you. was there ever any literacy test in Florida for the purpose of disenfranchising blacks to your knowledge? A. I don't think so. The closest they came was [84] the eight ballot box law which required a person to be able to read in order to cast his ballot but I'm not aware of a direct test like the Mississippi one.

Q. The eight ballot box law, you had to put your

ballot in the right box for the right candidate? A. Which might be inferentially a literacy test.

Q. When did that go out? A. Well, it was rendered kind of nugatory by the Australian ballot in 1895.

Q. The secret ballot? A. They went to the secret ballot, yes.

Q. That was put in, in 1895? A. Yes, The reason the eight ballot box law was no longer significant then was because the state began had printed their own ballots.

Q. Is it your opinion that the Australian ballot had any racial purpose behind it? A. I wouldn't think so. It didn't matter by that time, by 1895.

Q. Because by 1895 the blacks had already been effectively disenfranchised? A. Yes. We had good government then.

Q. Yes, sir. The poll tax, I believe you stated, was in effect from 1889 to 1937? [85] A. Yes, sir.

Q. Now, did that apply to a city election or county and school board or all of them or do you know? A. You mean the ending if it?

THE COURT: No.

A. It applied to registration for voting all the way.

Q. City as well as county? A. Yes.

Q. Could you be mistaken on that? A. Yes, I could always be mistaken.

Q. Was there a possibility that there may have been some other motives for the Legislature enacting these laws that you've referred to in the past, such as good government and business, anticorruption or other similar motives? A. Yes, sir. Rarely are you going to see a

group of, as of now a hundred nineteen men, pursuing identical motives. That's the nature of our process. Fifty percent plus one is what it takes in both houses and that usually takes some back scratching and very often you find multiple motives.

Q. Would you say it was a fair statement that these factors were substantially motivating factors in some, some or all of this legislation?

[86] THE COURT: What factors?

Q. The factors I just listed, good government, business, anticorruption or other similar type of motives.

A. There's no doubt by that there were people who were interested in good government and many, many —

Q. Is the answer to my question yes or no? A. It's, "yes but."

Q. It's, "Yes but." Okay, now, go ahead. A. The "but" is that many people until very recent years have equated good government and white voting, and I would suggest that that leading history of the Democratic Party by Cash in '36 would be a case in point where he makes it quite clear that that was that there was a correlation between the whites only voting and good government.

Q. These devices such as the eight ballot box, etcetera, was there any significant white opposition to these laws that were passed? Was there debate? A. Not much in Florida. There was a dispute in the 1885 constitutional convention over a thing called the McCaskill Amendment where some people in Florida wanted to go further than just a poll tax and make criminal misdemeanor types, that kind of thing —

Q. Are you saying it was not significant? [87] A. It was not significant in that a majority of the convention

thought that this was not necessary and they didn't pass the McCaskill Amendment.

Q. Okay, if I could, Dr. Shofner, you do recall back on March the 2nd when we took your deposition at Mr. Ray's office? A. Yes.

Q. If I could, let me read a couple of questions and answers to you, and if you would, tell me whether or not you made those statements. Question. "Are you aware of any significant —

MR. BLACKSHER: May it please the Court, would counsel, give us the page and line number.

MR. CATON: Page 54, line 18.

MR. BLACKSHER: Would the Court allow me to give the witness his deposition so he could read this?

THE COURT: He's going to read it to him.

Q. I'm going to read it to him. "Are you aware of any significant and influential white opposition to these devices that we have talked about?" Answer, "There was some." Question, "Would you categorize this as significant?" Answer, "Yes." A. Now, what devices are you talking about?

Q. The same ones that we've been talking about all morning. [88] A. I don't believe now that the context of those two questions, you know, in English grammar we have this faulty antecedent thing and I'm not sure our antecedents are correct there.

THE COURT: Mr. Caton, it was not clear to me that that was exactly the point we're talking about either.

MR. CATON: Okay.

THE COURT: If you want to go back into that deposition.

A. I'm reading the deposition for correction now and I'm to page 46 so I couldn't really attest to it.

Q. Let's go to a couple of questions prior to that. "Are you aware of any of them who in debate supported the —" Answer, "They participated vigorously in the debate but the poll tax thing —" Question, "Yes." Answer, "I'm not aware. I don't think they did." And then some other questions, so we're talking about the same type of devices. A. Yes, it sounds like agreement to me.

Q. You seem to have stated then there was some significant white opposition. A. Okay, now you're talking about that, a period a little bit beyond that when, and I believe this was Mr. Ray's questioning, he was talking about the Populists, who really hadn't gotten on the map by 1889, although they were pushing in the wings pretty [89] hard, and there were some Populist type white people who, I don't know that they were opposed to the poll tax but they differed from the Democratic majority in the state and they did protest but they didn't amount to much. By 1896 they were all gone.

THE COURT: All right, you want to go ahead, Mr. Caton.

Q. Well, you're saying now that there was no significant white opposition, is that correct? A. To poll tax vote requirement?

Q. To poll tax, eight ballot box.

THE COURT: Significant white opposition, you say?

MR. CATON: That's correct, your Honor.

THE COURT: Is that what you want to know?

A. That's what I am saying.

Q. Was there any black support of these types of devices? A. Not that I'm aware of, not much anyway.

Q. Reverend Kershaw? A. Joe Lang Kershaw, which is erroneous in the deposition —

Q. If you could, I realize that you know a lot about these things. If we could shorten the answers a little bit, did he support them? [90] A. Well, you can't always give short answers to those long questions.

Q. I think it's a pretty short question. A. That's the kind of questions I use to get the kids to do a lot of writing.

THE COURT: Doctor, he wanted to know, he asked you a specific question, did so and so support this poll tax. You can answer that. A. I do not know whether he did or not.

THE COURT: Then that's all we need to answer that question.

Q. Okay, you don't know.

THE COURT: That's what he says. Go ahead.

Q. This phenomenon of at-large elections versus district elections, when did it enter into Florida politics in the primary, I believe in the primary, you said, 1947 for school boards and counties? A. You mean the change from district nominating to at-large nominating?

Q. Yes, sir. A. Forty-seven with respect to the school board, fifty-four on the commissioners.

Q. How about in the rest of the country? Do we have this same phenomenon going on or do we have district elections, at-large elections? [91] A. It varies.

Q. It varies. So we may have in 1947 a state, New Hampshire, that would be going to an at-large election and Massachusetts may be going to a district election? A. It's perfectly possible.

Q. How about the change in basic forms of government such as the commission and city manager form of government as they relate to Pensacola and Escambia County? Are you familiar with that? A. All I know is that the first county, city commission form of government, was enacted in Green Cove Springs in about 1913. Consequent to this particular form beginning in Galveston, Texas, about 1900 or 1901, and generally being a fad for reform in city government until the city manager system became a new fad in about 1917.

Q. Do you know what the purpose of the city manager form was? A. I know what it was stated to be, yes. The city manager —

Q. Isn't that what most of your testimony is, what somebody else has stated? A. Yes.

Q. Okay. Well, let's go ahead and continue then, please. [92] Well, I was intending to.

Q. Okay. A. That is what I was going to do until you stopped me, and your question was did I know what was involved in the city manager system.

Q. Yes. A. Okay, apparently the city government of Galveston broke down in 1900 when a huge flood occurred so they decided —

THE COURT: Is that what you want him to tell us about?

Q. Not the total history, just the purpose of the city manager form of government. What was the reason for changing from one form to another? A. It's not going to make much sense but the idea was the commissioners having been specialists in their respective fields, sewage, what have you, didn't, it didn't work out too well. The combination of political know-how and expert knowledge



in specific areas was frowned upon and the city manager idea was one where you have an appointed executive who can be the specialist in city government and the commissioners can be or council members can be whatever.

THE COURT: Set the policy? A. Right, be the legislative —

[93] THE COURT: That was the reason or the answer for it along the way?

A. Yes, sir.

THE COURT: That would have nothing to do with race, would it? A. No, sir.

Q. Do you think that form of government has anything at all or any correlation to do with an at-large election or district election? A. I confess I just don't know.

Q. Dr. Shofner, would you agree with me that this regional and national histories that you've given us, histories of politics and voting laws, would you agree that they include many broad generalities, complexities and abstractions that might not apply to any particular community? A. I'm not at all sure I understand that.

MR BLACKSHER: Your Honor, I object to the question unless we identify what specific part of his testimony he's talking about, since part of his testimony was directed to the State of Florida's policy.

THE COURT: I can always hear you better when you talk if you stand up.

MR BLACKSHER: Excuse me.

THE COURT: He was not asking him anything from [94] his deposition. He was asking him a question, but it was such a general question I'm not sure. Did you understand the question, sir?

A. No, and I'd have to take issue with what an abstraction and generality, that kind of thing, is.

THE COURT: Repeat the question for us one more time if you feel the need to pursue it, Mr. Caton.

Q. Yes, sir. My question was would you agree that the histories that you've given us of politics regarding regions such as Florida or national, or areas such as the South, this type of history, does it not have a lot of generalities in it and complexities in it that, such that this general philosophy or whatever the trend is might not apply to a given smaller community such as Pensacola or Escambia County? A. Well, that would be true of anything besides a simple direct declarative sentence.

Q. The question is not of anything but of what you've been studying. A. But not only was Pensacola a part of the State of Florida, Pensacola and Escambia County —

Q. Could you answer my question, please, sir. A. I am answering your question.

Q. Could you answer it yes or no and then expound? A. That question does not have a yes or no answer.

[95] THE COURT: Mr. Caton, let him go ahead. He's using the approach of, "Yes, with this explanation," and trying to do that.

A. It's not that simple. What I was going to say is not only was Pensacola and Escambia County part of Florida but was a leading part and I can, Senator John Beard and his Representative colleague, R. P. Reese, were the initiators of many bills, separate streetcars, separate waiting facilities, separate rest rooms, which came up in the 1907 session right along with the —

Q. I think we're getting a little off the track. A. I'm sorry. That was the way I understood your question. You

said could there be something, a generalization about the South.

THE COURT: Mr. Caton, let's let him try. I thought you asked him about that way back there too. Try it again, Mr. Caton, if you feel there's something you want him to pursue. What is it you want him to tell you?

Q. What I want to know, Doctor, you've given us, you've told us you haven't studied Pensacola and Escambia County. A. No, I have not.

Q. You studied the State of Florida, and Pensacola and Escambia County are part of the State of Florida, we [96] certainly agree with you there. Pensacola and Escambia County is also part of the South, so to speak, although of course there are some other questions. My question to you is the general trends, philosophies, whatever, concerning government that you've given, that concern an area of a regional area, do they necessarily apply to all of the cities within that region, and counties? You give an example of Jacksonville in your deposition that you said was different. A. Yes, I realize and I thought I was going to get an opportunity to explain that, but of course you have the right to stop asking questions and you did. Pensacola was, and I've done enough reading in the literature about this town and this county to say this, was very much a part of Florida and the South and was not inconsistent with the generalizations that we've discussed here today regarding racial patterns.

Q. Pensacola and Escambia County were not inconsistent? A. They were right in the mainstream.

Q. Yes, sir. How can you state that when you haven't done any study of Pensacola? A. Because I didn't say that I have not done any studying here. I said I had never

pursued a topic that dealt directly with this local area particularly. I have [97] read the *Pensacola Journal* and the *Pensacola News*, the *Pensacola Observer*, all of which are nineteenth century newspapers, and we have considerable runs of them. I've read even some documents, the National Archives is filled because of the naval facility being here, filled with all kinds of information. The Department of Justice, for example, and from the Naval Shipping Board and all these things.

Q. These were things in addition that you've done that you didn't tell us about a little while ago? A. I thought I had but I guess I hadn't. I didn't pursue it.

THE COURT: You've answered his question, Doctor. Go ahead, Mr. Caton.

MR. CATON: Your Honor, there's a few more questions that I think it would be more appropriate for the attorneys for the county and the school board to continue at this point.

THE COURT: You mean you want to come — oh, you're finished

MR. CATON: Yes, Your Honor.

THE COURT: All right, who's next?

### CROSS EXAMINATION

BY MR. LOTT:

Q. Dr. Shofner, I represent the county commissioners [98] and I would like, if we could, to confine your testimony at this point about the questions I'm going to ask to the county commission form of government in Escambia County, and I believe from my notes your testimony was to the effect Mr. Blacksher asked you

whether or not the changes from single-member districts in the nominating process to at-large nominating process for the Democratic primary after 1945 was in any way racially motivated, and my recollection is your testimony was, "Yes, it was." Is that basically correct as to the county commission? A. That's basically correct as to county commission. If you accept my other proposition that it was not the only cause.

Q. Okay, recognizing that it was not the only cause I would like to go into some detail as to the background information that gives you the basis for your opinion.  
A. The background information to it, sir, is everything that I've said this morning.

Q. Well, in 1945 the courts knocked out the white primary. Now, what, events after that lead you to conclude in any way that the change in county commission method of election was racially motivated?

THE COURT: Other than that, now? Is that what you mean?

[99] A. Other than that?

THE COURT: He said after that time, what, if any events after that.

Q. After 1945 what, if anything, leads you to —

A. The entire pattern of resistance to black registration, the assassination of Harry Moore.

THE COURT: After 1945?

A. Yes, sir.

THE COURT: Nineteen forty-seven?

A. That was '51 when that happened.

THE COURT: Well, the county commissioner thing was 1947?

MR. LOTT: No, sir, it was 1954.

THE COURT: I see.

A. And the Dixiecrat movement, the resistance to the *Brown* decision, the entire pattern of behavior.

Q. In other words the fact that there was racial segregation in the South leads you to conclude that anything that in your opinion disadvantages blacks was done for racial motive? Is that what you're saying?

A. No, I'm not saying that.

Q. Would you clarify it for me then?

A. I'm saying than when the 1954 decision was handed down that there was considerable indication that with the outlawing of the white primary a decade earlier [100] the white primary might not be as, I mean the idea, the prevention of blacks from participating in the election that counted, the democratic primary, might not be as pertinent.

THE COURT: Was this change in 1954 before or after the primary decision?

A. What?

THE COURT: The change in county commissioners' districts in 1954, did it come about before or after the *Brown* decision?

A. The *Brown* decision, it was all about the same time.

THE COURT: That is the decision we're talking about, isn't it?

A. Right. And as a matter of fact this was three or four months before.

THE COURT: This change?

A. Yes, I think February.

THE COURT: Well, then obviously it couldn't have been affected by the *Brown* decision, could it, in making that change?

A. No, sir, but the kind of thing that caused a reaction to the *Brown* decision, it could have been affected by it.

THE COURT: How can it be reaction to the *Brown* [101] decision when the *Brown* decision had not been announced?

A. That's not exactly what I'm saying.

THE COURT: I don't understand.

A. The man asked me if I recall why I was saying that race had something to do with the reduction or the change in the election from districts to at-large in 1954, and my answer was the entire pattern of Southern, Florida, white response to these kinds of changes, including resistance to voter registration, which was before; including the kind of action that attempted to allay the attorney general's report, to allay the implementation of the *Brown* decision. yes, it came afterwards but it came within the same context. That's all I'm saying.

Q. What is the basis of your determination that it came in the same context? In other words how can we tell that the change in the county commission election procedure in 1954 was in any way connected with other events that were happening in the country at the time? Have you made any independent inquiry into that? A. Into what?

Q. Into whether or not the county commission change in form of government in '54 was in any way related to the other events that might have been happening in the coun-



try at that time. [102] A. That's all I do. If you're talking about some kind of statistical study, I've not done that.

Q. Well, have you made any historical study?  
A. Sure.

Q. As to the 1954 change in the method of electing county commissioners? A. I've read the same kind of sources that I always read and it suggests to me that whites who were in control —

THE COURT: I don't believe he's understanding your question. He wants to know if you've made a study, I think this is what you're trying to, Mr. Lott, to determine whether there were any other motivations other than race. A. Well, there were.

Q. No, sir. No, sir, what I'm trying to find out is whether the witness has made any historical inquiry into the particular facts surrounding the change in county government from districtwide, from single-member districts to at-large nomination of county commissioners in '54. Have you made any historical study of that?  
A. Because of that and the other things going on around us at that time I've read considerably in the public record, newspaper, public documents, the Journal of the House and Senate.

[103] THE COURT: You don't seem to be getting very far here.

A. No, I can't pin this down and I don't think it's fair to ask this because the general climate of opinion, the responses to it, are what I'm here for, and to that —

THE COURT: Well, you talked about other things motivating. What other things motivated this change in 1954 that you know of?



A. There were some people who thought that the ward system had become reprehensible in a couple of communities, and I think this one, but I'm more informed on Hillsborough County where you have a much more complex ethnic group there. And that's the kind of thing I was referring to. And twenty-nine counties had already gone to at-large by special legislation by this time.

Q. What was the motivation for those twenty-nine counties? A. Different things.

Q. Were they related to implementing what would be considered good government, progressive type change in government? A. If you accept good government, progressive type, as the way I define it here, yes.

Q. Are you aware of the particular way in which [104] Escambia County's type of nomination was changed? A. I've read the transcript.

Q. How was it accomplished? A. It had to do with a member of the commission who apparently didn't like the way the voting was going on the commission and she had instituted suit to broaden the franchise to at-large on the grounds of good government.

Q. An individual county commissioner, are you saying, or an individual citizen? A. I was under the impression she was a county commissioner but it may have been a citizen.

Q. But someone brought a suit, and what was the disposition of the suit? A. It was, her contention was upheld that the 1907 law providing for district selection of party nominees was unconstitutional in that it conflicted with the 1900 constitutional amendment and this was upheld in an amazingly short time by the Supreme Court.

THE COURT: This was a suit just before 1954? Not

that suit you're talking about earlier? This was another suit? A. I think it started in '53 and it was decided in February, '54.

THE COURT: I suppose you all know about that.

[105] A. I believe that's the one you're talking about, *Ervin vs. Richardson*, I assume.

Q. Wasn't that suit the direct moving factor that caused the change in the county commissioners' nominating procedure in Escambia County? A. I suspect it was.

Q. It was as a result of that suit and the orders entered by the court in that suit that the county commissioners were changed from a district to at-large election system, is that right? Is it your contention that suit was racially motivated? Do you have an opinion whether that suit was racially motivated? A. I think the point is that it did not upset the desires of the people who were in control in the county at that particular time. I think that, however, whether or not it was initiated for this reason, it served them very well.

Q. But you don't have any evidence to form an opinion it was racially motivated in its initiation, is that correct? A. I have, as I've stated several times, extensive information.

Q. Excuse me.? A. I have extensive information that that is the kind of society in which this state lived in the middle nineteen fifties.

[106] THE COURT: Yes, sir, but his point is that we may have had that kind of society but he's talking about the specific suit, whether it was or was not related to racial motivation.?

A. Directly, that's right.

THE COURT: So it was not there, and to follow you on that thing, everything was racially motivated, therefore everything is racial, but all you're saying in the particular thing, as I gather, is that it was not in fact racially motivated.

A. Not instigated, no, sir.

THE COURT: As far as the people in power were concerned it was all right because they wanted a court decision to comply and that's all they were doing.

A. That's right.

THE COURT: In that particular change. That's what you're saying really.

A. That's what I've been trying to say.

THE COURT: It sure took us a long time to get to it, Doctor. I didn't understand your testimony in that respect before but I do understand it now. You said this particular thing was not motivated, we had a general climate going to everything.

A. Yes.

[107] THE COURT: But this particular thing, going from single to at-large, had no racial overtones other than what we had already here, I gather is what you're telling me.

A. Yes, that's right. However, the field in which I am is not an adversary one and I realize we've got to narrow it down in here in order to —

THE COURT: All I'm saying to you, Doctor, if we had the racial climate and we had single-member districts before then, then that was racially motivated?

A. Yes, sir.

THE COURT: And if we had the other change you're saying it's racially motivated and I can't follow that.

A. I'm not saying racially motivated. I'm saying it certainly was consistent with the kind of protections these people were seeking.

THE COURT: Equally so you tell me really what was involved there was a court decision and that's all.

A. I said that earlier.

THE COURT: I think I understand. Go ahead.

### CROSS EXAMINATION RESUMED

BY MR. LOTT:

Q. Dr. Shofner, are you familiar with what the duties of county commissioners were during the period, say, after the 1885 constitution and up through 1905, 1910?

A. Yes.

[108] Q. What were those duties? A. They ran the county. They were the legislative and executive departments of the county government. You want specifics?

Q. Well, if you could give them to me. A. Well, I can give you some, I think. They controlled the election machinery. They decided where the precincts were. They staffed the precincts with personnel at election times. They, with some assistance from road districts, they maintained the roads in the counties.

Q. Was that a principal concern of the county commissioners in the 1900 era? A. Roads?

Q. Roads. A. Yes, except they divided the county up into road districts which conformed usually with the old militia beats and the road supervisors in the districts actually did the work but they came before the county

commission for approval of county roads and all of that, and of course the end of the period you included there, I think you said 1910 or so, didn't you?

Q. Yes, sir. A. The county commissioners in some counties, [109] this happened at different times in different counties, were beginning to take over road crews and establish, buy mules, this kind of thing, so roads were becoming a major consideration. At the beginning of the dates you specified it was a law in Florida and the county commissioners enforced this, that —

THE COURT: I believe, I think he's gone beyond your question, has he not, sir, or is this what you want?

MR. LOTT: No, I think he's fixing to get into what I'm asking about. I'm sorry.

THE COURT: Go ahead.

A. I'm just having to kind of search and find out. They had come in this regard from a requirement that everybody in the state put eight days on the road to a position of taxing for roads and began to go into the business of roads. They handled the county poor farm. Some counties established poor farm where they put indigents. They didn't do much about it but they were in charge of people who were mentally deranged and sometimes they sent them out, they would say, "This guy looks like a good fellow to take care of a fellow who's mentally ill so we'll pay you three dollars a month or eight dollars a month," or whatever, that kind of thing. There was a county dole and still is in some counties here where indigent people got a few bucks from the county right along. [110] So those are the kinds of things they did.

Q. Okay, are you familiar with the duties of county commissioners in Escambia County today or since — A. Just in a general way, that's all, yes.

Q. Would you say the duties have changed substantially? A. No, I think society has changed substantially and of course we now look to government for more things and of course the county commissioners do a lot more things but that's not so much because their duties have changed; it's because the needs of the society we exist in has changed.

Q. Would you say that the duties performed by the county commissioners in a Florida county today, particularly Escambia County, are substantially different than they were in 1895 to 1900, 1905? A. Yes.

Q. In character? A. No, not in character, but they're different in that, good Lord, the budgets they handle now as opposed to then.

Q. But they're providing the same kinds of services? A. The same kinds of services, not the same services. Now, I'm not saying that.

[111] MR. LOTT: That's all the question I have. I think Mr. Ray has a couple questions.

THE COURT: How long will you be, Mr. Ray?

MR. RAY: Just a few minutes, Your Honor.

THE COURT: Go ahead with your cross examination before we take a lunch break.

### CROSS EXAMINATION

BY MR. RAY:

Q. Dr. Shofner, my name is Lou Ray and I represent the school board. I have a few questions to ask you about your testimony concerning the school board. First of all am I correct that you testified by 1889 blacks in the State of Florida had effectively been disenfranchised?

A. No, I said that the legislation which led to effective disenfranchisement was enacted in 1889. Of course —

Q. So the following election — A. Yes.

Q. Evidenced to you that they had been? A. Yes.

Q. Disenfranchised by that time? A. In considerable numbers.

Q. And that following election took place in what year? [112] Ninety, 1890.

Q. If that's the case, on what facts do you rely to, for your opinion that the 1893 change in the school law was racially motivated? A. It's the reverse of that, actually. By 1893, there being less likelihood of an actual contest for office, this likelihood had been removed, and the people who sat in the Legislature in 1893 felt free to go ahead and make it democratic.

Q. So there was no racial motivation, no racially discriminatory purpose attendant to the 1893 law in your opinion? A. That's right, but that doesn't leave a true picture of what I'm saying.

Q. You're giving the reverse side of the coin, aren't you? A. Yes, sir.

Q. But the answer to my question — A. Yes.

Q. That there were no racially discriminatory purpose in the 1893 law is correct? A. That's why the appointive provision of 1889 which protected against that threat was removed in 1893., It was possible to remove it in 1893.

Q. By the same token the 1895 law changing the [113] school law in 1895, there was no racially discriminatory purpose attendant to its adoption either, was there, Dr. Shofner? A. No, but the law just before

that, in the session laws of 1895, the one that precedes it providing for punishment for anyone who operated an integrated school, seems to be. Those laws passed one and two in order.

Q. Let me direct your attention to the laws I want you to address yourself to. I'm talking about the laws that changed the form of government in 1893 and 1885.

MR. BLACKSHER: Objection, Your Honor. There's no evidence that there was any change in the form of government in 1895, and we'll straighten that out at recess.

THE COURT: Mr. Ray, on my notes I wonder what you're talking about. I see no relevance.

A. You mean the provisions for subdistricts? Is that what you're talking about?

Q. I'm talking about the laws changing the election method.

A. That's where they allowed the local districts below counties to come in.

MR. BLACKSHER: The trustees.

A. Yes, but he '93 and '95, I'd be willing to [114] say the same thing stood behind one that did the other.

Q. So, okay, in '93 and '95 you're willing to say there was no racially discriminatory purpose attendant to the enactment of those laws?

A. Because there was no need for it.

THE COURT: Because there was no need for it.

Q. All right, am I correct it was your testimony there was not another change in the laws with regard to school boards specifically until 1947? A. Nineteen hundred seven.



Q. Nineteen hundred seven. What happened then? A. That's when they went to district elections of the County Board of Public Instruction.

Q. Okay, and then the next change after that? A. That system was continued in a major revision of the school laws in 1939 and then the next change with regard to what we're talking about was '47.

Q. That's what I mean, the only change.? A. Yes.

Q. Between '07 and the present was '47? A. Yes.

Q. Are you familiar with the Minimum Foundation Program as that law has come to be known? A. Well, I'm not as familiar with it as that [115] professor from Florida, Mr. Johns, who wrote it, but I'm generally familiar with it. I'm generally familiar with the fact it was never fully implemented and that kind of thing but there's a lot about it I don't know. It was a very large law.

Q. Have you read it? A. Good Lord, not all of it.

Q. Do you know — I believe you testified that you considered it to be a major overhaul in the system of state financing of public schools. A. Well —

Q. And general school law, did you not? A. I did. It was really kind of an aside but, yes, I think it was because the school population of Florida had literally exploded in the four or five years just prior to that and there was a, the earlier Legislature had gotten through because there was surplus funds left over from World War II but there was a tremendous need to do something about additional kinds of funding for the school system and the idea was undertaken by the state that the responsibility was assumed by the state to provide a minimum foundation in that poor counties would be given the kind of aid that was necessary to maintain a certain level of funding. That was the general idea.

[116] Q. What sources, if any, have you consulted to learn about the Minimum Foundation Program and its history and its derivation? A. Well, I've read that citizens report that was presented to the Legislature just before that and I've read in and out of the law. I just simply have never sat down and started at line one and read it through.

Q. Do you know how long the Minimum Foundation Program as it is known now was on the drawing boards prior to its enactment in 1947? A. No, I really don't.

Q. Do you know how long the problems that the Minimum Foundation Program attempted to address were existent in this state, how long before the enactment of the law? A. Well, I suspect they'd always been here since the state assumed responsibility for public education. There was a major amendment in 1926 that put the state in the business of general funding and I think that was about the next major change since 1926 that I'm aware.

Q. We always had the problems, I would agree with you, Dr. Shofner, but I mean the accentuation of these problems, the exploding population. A. I had just been given to understand from what I had read and heard that the tremendous increase in [117] immigration into the state consequent to World War II and the fact that the last governor before the war, Fred P. Cone, who campaigned on a premise which a lot of people would, I'm sure, like to see, "Let's see how much money we have and then make our appropriations on that basis rather than deciding how much we need and going to find the funding," the fact is that Fred Cone's administration had rejected a lot of federal aid for buildings which would have been otherwise available to him and that put the state a little bit behind its population growth before World War

I, and then you have a tremendous influx of people immediately after, the GI Bill which put a lot of pressure on the higher-up colleges, and that's the general impression I've had and I confess that's about it.

Q. Dr. Shofner, you've given me, I think, a good explanation of what was behind the Minimum Foundation Program and its enactment and the problems that developed and when they developed that caused it to be enacted and you did not mention in that explanation anything about the courts holding the white primary to be illegal in 1945. Was that in any way connected directly or indirectly to the establishment of the Minimum Foundation Program? A. It seems to me it was very easy to make that little one-paragraph change in the entire law. There was [118] no major discussion on it. As far as I know there was no debate.

THE COURT: You say the change was a part of the Minimum Foundation Program? A. Yes, it was just in that particular paragraph or subparagraph, I've forgotten which one it was, the 1939 law in that portion was changed.

Q. So it is your testimony that that portion of the Minimum Foundation draws or is directly correlated to the 1945 decision? A. I'm saying that nothing had happened between 1939 and 1947 except the *Texas vs., Smith vs. Allwright in Texas, and the Davis vs. State of Florida* in Florida with respect to the nominating process for school board members. And that's what I'm saying. The timing is strongly suggestive.

Q. So you assume from the context in which, the time in which the change took place — A. Maybe deduce would be better.

Q. Deduce. But do you have any other sources that you have consulted that you can offer in support of your deduction that that change was racially motivated?

A. No one has told me specifically that that was the reason for it, no

Q. No one has told you that? [119] A. No. I've not asked anyone, however.

Q. Has anyone, has any source supported your deduction in that regard? A. Well, just about everything that's been written about the state in that period suggests that that's here again the general context that I suggested was it, and as far as the direct tie, you're going to find that. It doesn't exist.

Q. You're not going to find historical support for a direct correlation or a tie, are you, Dr. Shofner?

A. Not in the judicial sense at all. Historically, yes.

Q. Historically, yes? A. Yes.

Q. Tell me what sources support that? A. I've just gone over it.

THE COURT: I think, are you talking about all your general testimony? A. Yes, that's all. Yes.

Q. You're saying, "Refer to my general testimony. That supports it. It took place in that time period; therefore that must have been the purpose." A. I didn't say it must have been the purpose. I said it was a purpose.

Q. Are you familiar with the people, the [120] legislators and others close to the education scene at the time who were responsible and instrumental for the adoption of the Minimum Foundation Program? A. No. The only one I knew is deceased. I can't even think of his name now. He was from my region there. I checked this out, as a matter of fact.

Q. Assume for the minute, if you will, that a legislator of the time by the name of Leroy Collins was instrumental in enactment of the Minimum Foundation Program. Would you ascribe to him that motive? A. Well, in 1954 as Governor of the state he avowed to the body politic to do all he could that was legal to preserve the time honored institution of white supremacy, segregation.

Q. So you would ascribe that motive to him? A. I don't think it's doing a disservice to an honorable man that changed his mind to say that he was part of his community at that particular time.

Q. Fine. I knew that you knew that he had said that in 1954. Did he make any such statements in 1947 at the time of the enactment of the Minimum Foundation Program? A. I doubt seriously if there was any need for him to. It hadn't risen to the level of expression by that time.

[121] Q. I'm going to wrap this up, Dr. Shofner. Is it not implicit in your testimony that in your opinion at-large elections disenfranchise black voters? A. Currently.

Q. Yes.

THE COURT: Say that again. Will you repeat that question?

Q. Yes, Your Honor. Is it not true that it's implicit in your testimony that in your opinion at-large elections disenfranchise black voters? A. No, but I think it is implicit that it helps to dilute the effectiveness of black votes still. And that's, I think that is implicit in what I'm saying. I would like to make it implicit.

Q. So it is, the answer to my question is yes? A. (The witness nodded in the affirmative.)

Q. Finally, Dr. Shofner, you testified to your findings and feelings of the political mood of the state during this entire period of time and I believe you testified that that would be a mood that would be prevalent here in Pensacola just as it was throughout the state. A. I think so, yes.

Q. Fine. Do you, sir, recognize as authoritative the works and writings of a historian by the name of [122] James R. McGovern? A. I've read the manuscript and he asked me to read it before publication. I made some, I had some reservations about it, which I don't know whether he incorporated them or not. But I don't know specifically what you're speaking about but I am familiar with it and I have immense respect for Dr. McGovern.

Q. Well, do you recognize this manuscript or this book? A. I'm aware that that's the book that came from the manuscript, yes.

Q. You recognize it as being authoritative treatment of local history in the period of 1900 to 1945? A. With some reservations that I'd have to produce. I don't recall now, but I sent him a critical commentary and I would certainly have to refer to that before I could —

Q. Do you recall offhand what those reservations were? A. No. I remember the one thing, I asked him, "Why don't you bring it down to the present," and he said he thought that was enough for one volume and that was a legal, I mean legitimate breaking-off point there. But I've forgotten now what. I really have.

Q. Do you recall any other reservations you might [123] have had with regard to this manuscript? A. No. I think he's a careful worker, if that's what you mean.

Q. I understand. But is it your testimony now that

notwithstanding that you still are not ready to adopt this work as an authoritative work on Pensacola history during the period 1900 to 1945, that you're not willing to recognize it? A. I think it's a general overview which shows the growth of a port town from a very infant sort of a rural place to what he calls a metropolis in 1945. It's a general overview.

Q. Not an in-depth historical study but a general overview? Is that the qualification? A. Yes, that's the qualification I'm trying to make. It can't do that sort of thing, I think.

Q. Dr. Shofner, let me ask you this. Would you just read the first sentence on the very first page of the introduction, the second paragraph. A. Let me get my glasses. Where it's lined there?

Q. Yes. Read that first sentence. A. I don't quarrel with that.

Q. Please read the first sentence. A. "Pensacola, Florida, is not a typical Southern city."

[124] Q. You do not quarrel with that? A. In the sense he means it. Would you connect the second sentence to it? He's talking about the fact that it's long been a military center and —

Q. Dr. Shofner, did you state that you do not quarrel with his statement on the first page? A. Yes, sir.

THE COURT: Mr. Ray, let's don't take the statement out of context.

A. I said I did not quarrel with it.

THE COURT: It could mean many things. A. Okay.

THE COURT: Just a minute, sir. Are you trying to get into something in that book that shows it's not a typical

Southern city in the sense it has less racial motivation or something?

MR. RAY: I'm asking him whether or not he agrees with the statement by that, the historian James R. McGovern, as stated here.

THE COURT: My point with you, sir, is that I think all of us could agree that perhaps Pensacola is not a typical Southern center but the question is whether it's not typical of the way you are seemingly implying or something else?

A. I don't understand

[125] MR. RAY: Dr. Shofner would like to have you think that, sir.

THE COURT: What is the second sentence?

A. Okay, the first sentence, "Pensacola is not a typical Southern city. The fact that it was a port and a military base accounts for its rich differences and thus invites attention to the actual mosaic often conveniently described as the New South."

Q. Do you disagree with that?

A. No.

MR. RAY: No further questions.

THE COURT: Any redirect?

MR. BLACKSHER: No redirect at all, Your Honor.

THE COURT: This means this witness is excused from further attendance, hearing no objection. Doctor, you're excused from further attendance.

\* \* \* \* \*



## TESTIMONY OF DR. GLENN DAVID CURRY \*

[250] GLENN DAVID CURRY, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

\* \* \*

[306] Q. Let me ask you this now. Does a regression analysis, as I understand, is a measure of the best straight line analysis of comparison of two variables? Is that correct, sir? A. Ordinary least squares is what this technique is called, the simplest form of regression. There are more complicated forms that could get the "r" square higher such as a whole set of quadratic regressions and orthogonal polynomials.

Q. Suffice it to say, though, in this case in one particular regression analysis you're comparing two variables at one time, are you not? [307] A. For straight line, yes, sir.

Q. Is qualification of a candidate a variable in an election or in a voting issue?

Q. Qualification of a candidate? A. Yes, sir.

A. It sounds like a political science question. Do you want my opinion as a citizen?

Q. Yes, sir. Does qualification of a candidate strike you as a variable to be considered in analysis? A. When I vote, I vote on qualifications. I don't vote as an expert.

THE COURT: You're talking about things you read in an out?

A. Yes, sir.

THE COURT: But you did not and could not take into these things the fact that different candidates have dif-

\*Transcript pages 251-57, 261-63, 271-73, 299-303, 341-44 of Dr. Curry's testimony were accidentally omitted in printing but are included in Volume V to this Joint Appendix at 1267-83.

ferent appeals unrelated to race or anything else, particularly to certain segments of voters?

A. Yes, sir.

THE COURT: That's something you could not take in account in analysis?

A. Yes, sir, and if we could take it in account we would have to assume it fits in what's left over after the percent black, which in some cases is 90 percent, so it would fit in the 10 percent.

[308] THE COURT: Not necessarily. Wouldn't a black person vote for a white person and vote not because of race but qualifications, and in fact a white person would do the same?

A. Yes, sir.

THE COURT: In fact we've had a couple of races in this county where apparently that's happened.

A. Yes sir.

THE COURT: It's not necessarily what you said; it's just simply a factor you couldn't take in account?

A. It's a factor I couldn't take in account but in those races where you have a 90 percent "r" square that is so powerful that it is showing in that case they were voting on the basis of race.

THE COURT: All right, sir. Go ahead.

Q. Does it not consider, does it not show that only among the variables which were considered — A. Sir?

Q. Does it not show, the "r" square, a high "r" square, show the percent of variation or the explanation for the percent of variation only among those variables which were considered? A. Yes, sir.

Q. And if qualifications were not considered then it does not show it with respect to qualifications [309] that having not been taken into consideration, is that correct? A. May I state where that might occur, that it —

THE COURT: We're not asking you for explanation so much at this time, Doctor, as we're asking you for answers to his question.

A. Is it possible, yes, it's possible, but I could give him the answer.

THE COURT: It is possible, and that's all he asked you.

A. Yes, sir. Thank you. I could tell him how it would be possible.

THE COURT: He doesn't want that.

Q. Maybe Mr. Blacksher would want to ask you that later on.

THE COURT: We'll get along faster if you'll confine yourself to the answers to the questions. If you can answer yes or no, do so.

A. Yes, sir.

THE COURT: If you have to explain it, you can.

Q. In whatever event, in whatever variables you're considering you characterize this as your statistical best guess? Is that you testified on direct? A. Yes, sir.

Q. That's without knowing how many people actually voted, you did not know how many people actually voted when you did this particular regression analysis? A. I wish to —

THE COURT: Your answer is you do not know how an individual voted?

A. I don't know how an individual voted.

THE COURT: All right, sir.

Q. What you're doing is not how people voted as to a particular candidate but merely the percentage of voters in the precinct as to the percentage of votes the particular candidate got? A. That's what I'm comparing but my conclusions are based on individuals voting. The conclusions I'm coming to do speak to individuals.

Q. Were you saying, were you testifying in terms of conclusions at your deposition or were you going to leave that to Dr. Cotrell? A. At my deposition I don't think I'd made many conclusions from them and I was given the idea that you were going to ask Dr. Cotrell for conclusions. The only conclusion I've made, as a matter of fact, is that there is polarization in voting.

Q. Now, you defined an "r" square, pardon me, a [311] moment ago you'd said I believe, that a high "r" square at the level of .9 would be so powerful as to race that it had to show racial polarization, did you not? A. Did I say that? Yes, sir.

Q. Okay, if a black candidate — A. Except I did say it was possible for it not to, in case an additive were brought in, and the particular instance you asked me, you told me you didn't want to hear.

Q. If a black candidate only exposed himself to black voters and only campaigned and the only issue he campaigned on was that he would represent black interests it would still be conceivable to get a high "r" square of .9, would it not? A. Yes, sir.

Q. Now, you'd indicated on your direct examination you used some hundred twelve or hundred fourteen precincts in all of your regression analyses. A. No, sir,

I used whatever precincts were available and in the 1976 county elections it was a hundred fourteen precincts.

Q. In the case of elections within the City of Pensacola you didn't have a hundred fourteen but in some instance only had twenty-nine or twenty-seven, is that correct? [312] A. It varied, yes, sir.

Q. Is twenty-nine or thirty-seven entries enough in your judgment, your professional judgment, to make a conclusion based upon that small number of entries? A. Yes, sir, it is, but, yes, sir.

Q. Wouldn't you need a hundred? A. Not necessarily, sir. If you'll check Draper and Smith, which is the definitive source on regression, you'll find they do regression with twenty for most of the examples.

Q. Do you recall that Mr. Caton at the deposition on February the 27th posed some hypothetical questions to you with respect, and gave you a number of samples and inquired about what conclusions you could draw from an instance of three samples? A. Yes, sir, I think.

Q. And you rejected the three samples, did you not, that you could draw conclusions? A. I think so. I don't remember.

Q. Then he asked you if you could assume there were ten and you rejected those as well, did you not? A. Yes, sir.

Q. In fact you asked for a hundred before you agreed to make a conclusion, did you not? [313] A. He gave me — if you could repeat the hypothetical example Mr. Caton gave.

Q. Okay, sir. I have the beginning of it but I can give you the page right here. It's on page 66. I'm trying to find where it begins.

**MR. BLACKSHER:** May I give the witness a copy of his deposition?

**Q.** I'm going to have to back up, I think, Dr. Curry, to say page 63, about line 12, and that's where the series of questions begins. Let me read it to you. Question, "Let's assume that candidate A was running against candidate B in all three of those races. Let's assume that candidate A was white and was also the incumbent. Let's assume that candidate B was black and was not an incumbent. Let's assume that candidate A won all three races. Let's also assume that candidate A received a majority of the white vote pursuant to your analysis and candidate B received the majority of the black vote. What sort of conclusion would you draw from that?" Answer, "Probably none to," and then Mr. Menefee states, "I'm going to object to the form. Answer it if you can." The witness: "I probably wouldn't draw any conclusions except the ones that you have already assumed, that the incumbents won every race. I don't understand, I couldn't do a statistical analysis of those [314] three races given the data that you have given me. That is an awful small sample." By Mr. Caton question, "You mentioned here you used several factors when you were doing your analysis: Income, voter registration, race, party preference, vote return, what was that?" Answer, "Vote return is what I'm predicting. You know, that is the dependent variable in this case. I'm checking turnout on each election, by the way, let's mention that." Question, "What I'm getting at is if you have," apparently a typo, "data that indicated two different things, how could I draw a conclusion. Can I draw a conclusion that white candidates vote for white people or that white candidates vote for incumbents or that black people do not vote for incumbents, how could I draw a conclusion?" Answer, "Okay, what I need to do, let me think a second about that you are getting at because the problem is a complex statistical problem. When they hired me, it took me a couple of days to think about the problem after

they gave me the details and then asked questions about it, so then, let me think about it a second. You have got three races in 1977 involving candidates, incumbents." Question, "Incumbent is A and newcomer is B. Also all of the incumbents are white and all of the newcomers are black." Answer, "Okay, and you are saying that the white people predominantly vote for [315] the incumbents and the black people predominantly voted for the newcomers on these three races?" Question, "Right." Answer, "Okay, I would say you are wasting your money on statistical consultant. That is just, I mean you have already said everything that can be concluded from that." Question, "Well." Answer, "I would say it's a dilemma, you know, why, the question to whether blacks just don't like to vote for incumbents or not is still open." Question, "Well, could I conclude from that, from the hypothetical that I have given you, could I conclude one of two different things, either that black voters like to vote for black people or that black voters do not like to vote for incumbents?" Answer, "Just given three races that feel every way, the blacks," question, "Yes." Answer, "Would you conclude or do you want to know —

THE COURT: Mr. Fleming, I think this is the longest version of impeachment I have ever heard in my life. I'm not sure what you're getting at.

MR. FLEMING: Has he testified differently than he's testified here?

MR. FLEMING: I think, Your Honor. I have about three more questions from this deposition.

THE COURT: All right, sir. I've never heard impeachment done in this way before. Go ahead.

[316] MR. FLEMING: I was only reading that much to bring it into context.

THE COURT: Go ahead and get through with it.

Q. Answer, "Would you conclude or do you want to know what I would conclude? I couldn't conclude anything from the three races, to tell you the truth." Question, "Let's assume there were ten of them with the same result in each one." Answer, "Could you give me a hundred elections?" Question, "Let's make it a hundred." So you asked for a hundred elections before you could draw a conclusion? A. Yes.

Q. With respect to that instance? A. In that particular situation. That's a different situation than what I'm doing here, though, considerably different, sir.

Q. It's a comparison of the number of samples, though, is it not, trying to draw a conclusion from the number of samples that you had to draw in each race? A. Yes, sir, and in this situation I don't, if it turned out the way Mr. Caton said I still wouldn't be able to draw the kind of conclusion he wanted from a hundred races, especially if they all went the same, because there's no variation in the example Mr. Caton gave me. In every case we know that blacks don't vote for [317] incumbents, blacks don't vote for winners, we also know that incumbents always win. Without the variation you don't have any statistics.

Q. Okay, sir. I appreciate that explanation. I would like now to go on to another matter, some of your fundamental explanation that you drew on the easel here for the Court. If I could back up just a little bit, what you say, do you not, is that a regression analysis gives you an equation of a straight line represented by the formula  $Y$  is equal to  $a$  plus  $bX$ ? A. Yes, sir.

Q. And the little  $a$  in this instance is where the line intercepts the  $y$  axis? A. Yes, sir.

Q. And if you're applying it to the factual situation that we're applying here then that  $y$  axis would indicate an all-white vote where there were, pardon me, where there



are no blacks registered to vote in that precinct? A. That would be the best guess, sir. If you look at the example behind you, you'll see it crosses, that in the zero precinct the best guess from the equation is not where the zero race is.

Q. Okay, well, that's your this is your [318] hypothetical? A. yes, sir.

Q. On the next page you showed the line crosses between two dots. Is that your point? A. Yes, sir.

Q. Okay, and back to the equation  $Y$  equals  $a$  plus  $b$ x, then  $b$  is the slope? A. Yes, sir.

Q. Of the line, and this line is the line you attempt to draw each time you do a regression analysis. You could plot that line theoretically on every scattergram that you do in which you do a regression analysis, is that correct, sir? A. Yes, sir.

Q. I would like to look at some of these races, if we could. Why don't we look at a countywide race, 1976, first primary, between, in which Dr. Spence was the black candidate and his white opponents were Mrs. Marshall and Mr. Smith, 1976. A. Is that county commission, sir?

Q. No, this is school board.

THE COURT: This was a race between a white and a black?

MR. FLEMING: A black and two whites.

THE COURT: A black and two whites.

[319] MR. BLACKSHER: Number thirty-two in the summary, Your Honor.

THE COURT: Beg pardon?

MR. BLACKSHER: It's number thirty-two in plaintiffs exhibit 16, the summary, if you want to look at it, on page thirty-six of the summary.

Q. I wonder if we could look at the scattergram. Do you have that with you? A. Yes, sir, I'll find it for you.

THE COURT: You say page thirty-two?

MR. BLACKSHER: Page thirty-six, Your Honor, number thirty-two.

A. This is tabbed wrong.

Q. Well, I have a copy of it here, if we could work from mine, perhaps. Here you go, sir. A. Okay, that's fine.

THE COURT: I think I've got the results over here. You all go ahead. I'll look at it as you go.

Q. Let's examine that particular scattergram there. There are two in that particular race and if we could look at the scattergram that was done comparing the percent black to the percentage of votes for Dr. Spence. Would you draw for me, please, sir, the regression line.

A. Okay, let me see.

Q. In that particular instance.

[320] A. Let's see, we get the equation this is percent votes for Spence equals, this is the intercept, 25.23966, plus .7.

THE COURT: This is getting in the record. He's using your copy.

A. I'm sorry.

THE COURT: Go ahead.

Q. Is that all right on the scattergram? It's typed into the result, is it not, in your printout? A. Yes, sir, it comes out right here. This is the equation. You take the slope here, multiply it times percent votes for blacks and it gives me this equation and I would draw the line for the equation substituting in values. The easiest value to draw in, of

course, would be if the percent black were zero. That would be 25.23, which would be right about here.

Q. Will you draw the line, please, sir, or estimate it as bet you can. A. Oh, yes, sure.

THE COURT: Doctor, you don't have to be too accurate, just an estimate.

A. I can draw the line. If we had a hundred percent black neighborhood this would be 70 so we have 70 plus 25 is 95. It would be right here, and if I had a straight edge I would be able to draw you a straight line [321] and it goes right there.

Q. Okay, and an "r" square based on that line, you say, tells you what percent of variation in candidates' votes can be explained by the changes in percent black? A. Yes, sir.

Q. Okay, and you say your "Y" intercept there is 25 plus a fraction? A. 25.3966.

Q. On this scattergram does each of those dots represent a precinct? A. Yes, sir.

Q. And a plotting of the percent black in the precinct and the percentage of votes that that candidate got? A. Yes, sir.

Q. Can you look at that scattergram now in this particular race? A. Yes, sir.

Q. And note, if you would, does this not indicate that Dr. Spence got better than one-third of the votes in thirty-seven of the hundred fourteen precincts? A. I'd have to count.

Q. Why don't you count. A. All hundred or so?

THE COURT: What is it, gentlemen, you're driving [322] at?

I don't understand it. We're talking about race and those kind of things. He did get a substantial number of votes. But how does that prove that there's something wrong in his statistical analysis when you get it down just to thirty-six precincts unless you're going to carry it a step further and show what the race percentage is? I don't understand this approach.

MR. FLEMING: Maybe I can get into it in a little bit more of a fundamental way.

THE COURT: All right, let's let him assume he got them in thirty-six. You counted them, whatever you want him to tell you, make the assumption, whatever it was; he got one-third of the votes in thirty-six precincts. Is that what you want him to do?

Q. Yes sir, this was a race with a .90 "r" square, and "r" square you consider very high, do you not, Dr. Curry? A. Yes, sir.

Q. Okay, if you count them does it not indicate that Dr. Spence got better than a third of the vote in thirty-seven of all the precincts? A. Yes, sir.

Q. Okay, does it also show that Dr. Spence carried over, he got over 50 percent of the votes in some nine precincts, which were over one-half white? [323] A. Let's see, I can get that. There's the 50 percent line. How much was the percent white, sir?

Q. Fifty percent white. A. Fifty percent white. Okay, he got over 50 percent?

Q. Right. A. In one, two, three, four, five, six, seven; seven, I count, sir, roughly. That's close enough.

THE COURT: Predominantly white precincts is what he's asking.

A. Yes, sir.

Q. Okay, and he got over 30 percent of the vote in several all-white precincts, did he not? A. In several, yes, sir, he did. All-white precincts, let's see, five of them, sir. He never got over 45 percent, though, in any all-white precinct.

Q. Okay, but nevertheless this was a .9 "r" square and shows a considerable white vote that Dr. Spence got, did it not? A. I wouldn't call it considerable, considering all the election returns, sir.

Q. Considering the fact he lost the election? A. Yes, sir.

Q. Is that what it takes, a considerable number, would it have to be that Dr. Spence won before he got a [324] considerable number? A. I'm sorry, I can't define considerable.

Q. I'm sorry, it just a rhetorical question and I withdraw it. A. Yes, sir.

Q. The point I'm trying to make, let me just ask you a question this way. Is it not possible to conclude in some instances, being some scattergrams and regression analyses, that you can have a relationship or a high "r" square and a relationship over the full range from zero percent black to 100 percent black yet within a certain range you might have no relationship? A. That's true, sir.

Q. Is that true? A. Yes, sir.

Q. I have a text here. Do you regard — A. Yes, sir.

Q. Mr. Hubert M. Blalock, Jr., who wrote the text *Social Statistics*, as authoritative in this field? A. Yes, sir, it's one of the best texts. I used that in 1971 in my first regression course. Chapters sixteen and seventeen are the chapters on regression. I think.

Q. Real good, because I'm referring to a diagram in paragraph seventeen, a copy of which I have [325] marked as defendant county exhibit number 1 for identification, and I would ask you if that diagram explains this phenomenon. Here's a copy for the bench. Or if that's an example of this phenomenon showing a relationship over the full range. A. Yes, sir.

Q. And not showing it within a limited range? A. Yes, sir.

MR. FLEMING: I'd offer the Xerox copy of this diagram into evidence as defendant county's exhibit number 1.

THE COURT: Any objection?

MR. BLACKSHER: No objection.

THE COURT: Put it in evidence without objection.

DEPUTY CLERK: Defendant county's exhibit number 1 is received in evidence.

Q. So you can have a relationship over the full range? A. Yes, sir.

Q. And not necessarily have one at the low end, and bringing that to this case, then you could have a relationship of percent black to percent of votes that a particular candidate gets, very positive relationship over the entire range? A. Over all the precincts.

[326] Q. Whereas you might not — A. Yes, sir.

Q. Where you have a low percentage of white candidates? A. Can I show you an example of that, sir?

Q. Let me go through some other examples now, Your Honor. This is the point I was trying to make, and if I may and you'll bear with me a few minutes, I would like to go through a few more of these contests. Let's look at —

THE COURT: If you're going to another one, you want to finish with him. He asked you questions about this, but does that alter your opinion?

A. No, sir, it doesn't alter my opinion.

THE COURT: So there you are when you're cross examining.

MR. FLEMING: Thank you, Your Honor. This is plaintiffs' expert.

THE COURT: I don't see any basis, frankly, to cause me to be dissatisfied with it. We can take all kinds of figures and things like that and come up. All this is possible, but he had this particular situation and based it on it. Now, I'm no expert in statistics and I assume you're not, sir, either.

MR. FLEMING: Well, that's why, Your Honor, I'm [327] trying to bring it down to the black and white of the scattergram.

THE COURT: Fine, sir, but as I get through with what you just got through and we took ten or fifteen minutes on it, it hasn't altered his opinion one bit, nor did I see any basis for it to be required to be altered.

MR. FLEMING: I don't think it's going to be altered.

THE COURT: I see no reason why it should be from what you're cross examining on, and I'm the one you're trying to get to.

MR. FLEMING: I'm not trying to alter his opinion. I'm merely trying to show the scattergrams support the defendants' opinion in the case as well as support the conclusions drawn by Dr. Curry.

THE COURT: I'll let you try again and see some place, but there are variations in it, but what he has here are all

consistent with what he said, as I understand it. I'll let you go further. Go ahead.

Q. Thank you, Your Honor. I would like you now, Dr. Curry, to refer, please, to the 1974 general election for the school board between Mr. Jenkins, the black candidate, and Mr. Leeper, his white opponent.

THE COURT: This is 1974?

[325] MR. FLEMING: I have them marked on the tabs.

A. Thank you.

MR. BLACKSHER: Page thirty-six, Your Honor.

THE COURT: Page thirty-what?

MR. BLACKSHER: Thirty-six in the summary.

Q. That one is for Leeper. Let's look at, there doesn't appear to be one for Mr. Jenkins in this, does there? A. No, sir, it would have been a waste of computer money to keep running mirror images.

Q. Examining that particular scattergram, keeping in mind all the dots indicate the runs in a particular precinct — A. Yes, sir.

Q. Does not that scattergram support the conclusion that Jenkins carried some nineteen precincts which were over half-white? A. Jenkins, let's see, this —

Q. That's on Leeper. A. This is Leeper, okay.

THE COURT: Jenkins was running against Leeper? Is that the race you're talking about?

MR. FLEMING: Yes, sir, the 1974 general election.

A. Let's see, these are all-white precincts up here and carrying would be getting over 50 percent of the [329] vote.

Q. Yes, sir. A. Since Leeper got over 50 percent vote



in all these white precincts I guess these would be the ones where Mr. Jenkins got over 50 percent. I count two, sir.

Q. Okay, I didn't say all-white. I said where they were over 50 percent white. A. Fifty percent, sorry, sir.

THE COURT: Your point is what now, that Jenkins did what now, sir?

MR. FLEMING: My point is that despite a high "r" square of .89 in this case that Mr. Jenkins is getting a considerable number of white votes.

A. I would rather say some myself.

THE COURT: How's that?

A. I would say some rather than considerable.

Q. Rather than making the distinction between some and considerable, that's why I'm suggesting we count them.

THE COURT: What were you saying? He got so many votes in something?

MR. FLEMING: I'm saying this diagram suggests that he carried nineteen precincts which were over half-white.

[330] THE COURT: I tell you what I want to do. It's about 10:30. I can see where we can go on and he's got to take time to do all this counting. I'm going to take a recess and you can sit down and tell him whatever else is coming up and let him count it while we take a recess and move along. I'm getting more and more concerned, the way this case is going. It takes a lot of time.

MR. FLEMING: Well, it could take a while, Your Honor, so maybe we ought to take that recess.

THE COURT: We'll try to move it along and work late hours. Suppose we take a recess at this time and be in

recess for about fifteen minutes to give you a chance, whatever else the rest of your cross examination is getting into, you go into it instead of taking time now to count and do things like that. Court will be in recess for about fifteen minutes.

(Recess)

(Open court)

THE COURT: You may proceed, Mr. Fleming.

MR. FLEMING: Your Honor, I think I can be very brief from this point on. Counsel for the plaintiffs have agreed that it would be acceptable if I prepared a summary at a later time of the conclusions I would like to be drawn from these scattergrams, and so long —

THE COURT: You don't want to cross examine him [331] on them?

MR. FLEMING: Yes, Your Honor. I was just pointing out I'll make the cross examination much briefer due to that.

THE COURT: All right, sir.

#### CROSS EXAMINATION RESUMED

BY MR. FLEMING:

Q. Dr. Curry, would you tell the Court what you mean when you conclude, as you have done in many instances here this morning, that there's polarization. A. For the definition I'm using here, if there's an "r" square higher than .50 and a relationship between percent black voters in the precinct and percent of the votes a particular candidate gets, that vote is polarized.

Q. So that's all you mean to say then, is a high "r" square? A. Yes, sir.

Q. Can members of the black race, if members of the black race are voting for only black candidates and there is no, little evidence with respect to how the whites are doing, can you still have a high "r" square? A. There is evidence of how the whites are doing here, sir. No, sir, I don't understand. I don't understand the question, sir.

Q. Can you have a high "r" square by virtue alone [332] of blacks voting consistently for blacks? A. No, sir, you have to have whites not voting for blacks also, or a tendency.

Q. Let's look at an example then here, if we could. I referred during the recess to a 1975 election for city council in which Mr. Williams was the black candidate. His white opponents were Messrs. Ferraro and Porter. We had an "r" square of .67, which you indicated would be indicative of polarization in that race, did you not? A. Yes, sir.

Q. Would you explain in that scattergram and tell me if it is true that with respect to the all-white precincts, and I would be defining all-white for the purposes of this question, a precinct which is 95 percent or better white — A. Okay, that's right over here, sir.

Q. That in every one of those elections but two or every one of the precincts but two Mr. Williams carried and got a majority of votes. A. Yes, sir. You don't need a statistician to tell you that.

THE COURT: You think there is polarization?

A. There is because it's defined by blacks voting differently from whites. Even though this man won [333] this election still blacks and whites were voting in a polarized manner here.

THE COURT: What you say is this, that when we get through with race polarization it is not necessarily in-

dicative of the question whether a black candidate can or can not get elected; all polarization does is show to varying degrees of significance a tendency on the races to vote for members of their own race? That's all polarization shows?

A. Yes, sir.

THE COURT: It is not indicative and can not be said to be absolute proof certain that even where we have polarization a black can not get elected against a white because we've had it happen?

A. Yes, sir.

MR. FLEMING: Yes, Your Honor, and further that you can have polarization by Dr. Curry's definition even in a case where the black candidate gets the vote in every white precinct except two.

THE COURT: Let's ask him about that one again. In this particular instance Williams, from what you just told me, Hollice Williams, he carried the predominantly white precincts.

A. He carried all but two in this particular election, sir.

[334] THE COURT: How can you say there was polarized white voting against him?

A. Compared to the black, compared to the black votes there were more. There were more. He got more votes in the black precincts. That's the only way you can say.

THE COURT: But all you can say there is that the blacks voted for him but you must also say that the whites voted for him.

A. Yes, sir.

THE COURT: So your definition of polarization means where any one race votes for that particular race, that's the limit of your definition?

A. It's not just a matter of race. It could be, for instance, we had two white candidates even, or two black candidates, and one race voted for one of the candidates solidly and one race voted for the other candidate solidly. It's a matter of whites and blacks voting at different poles, different ends of the spectrum. In this case what this means —

THE COURT: Anyhow when you said there was racial polarization in every race you checked, under your definition of racial polarization it would mean in the particular case whereas here in your statistics your approach shows the blacks voted for the black candidate.

[335] A. Yes, sir.

THE COURT: That would be sufficient to establish racial polarization as far as you're concerned because in this instance it also shows that the white people voted for the black candidate as well.

They voted less. They voted less for the black candidate and voted more for the white candidate.

THE COURT: I see. It gets to where your "r" two factor was what?

MR. FLEMING: Point 67.

Yes, sir.

THE COURT: Point 67.

MR. FLEMING: I have no further questions, Your Honor.

THE COURT: All right, sir. Redirect? Didn't we have another election in which we had a black man elected? I was going to ask about that one. What about that one?

MR. FLEMING: That would be Dr. Spence.

THE COURT: I would like to have you tell us about that one. I know we had one more.

A. Okay, do you have that handy?

MR. FLEMING: That was for city council.

A. Yes, sir.

MR. FLEMING: Here we go. I've got it right [336] here.

THE COURT: Which race was that one, sir? I've forgotten which one it is. You all know, I'm sure.

MR. FLEMING: Nineteen seventy-five.

MR. BLACKSHER: Page twenty-three of the summary, Your Honor.

THE COURT: Page twenty-three, all right.

MR. FLEMING: Your Honor, I submit that an examination of this particular race, here's the scattergram for Dr. Spence. There was an "r" square of .82. Dr. Spence won twenty-five of the thirty-seven precincts and only nine of those twenty-five were over 50 percent black and I think that would be borne out by examination of the scattergram.

THE COURT: Well, that shows an "r" two factor you have of black, this is Spence-Gilmore race, is that right?

MR. FLEMING: I believe so, Your Honor.

THE COURT: For the city council.

MR. CATON: Right.

THE COURT: In that one you showed an "r" two factor of .82, which would indicate polarization to you?

A. Yes, sir, there was polarization.

THE COURT: Yet when we got around to the white

people voting in this thing you said since they did not vote for [337] him but the white people did vote for him, did they not?

A. Sir, less white people voted for him than black people. That's what I'm saying, polarization.

THE COURT: But more white people voted for him than voted for the white opponent, is that correct?

Yes, sir.

THE COURT: So you can't say from that there was polarization from the white people either because actually more of the white people voted for the black candidate than voted for the white candidate.

A. The black candidate, yes, sir.

THE COURT: I can say there's polarization because blacks are significantly voting different from whites?

MR. FLEMING: And you're saying there can even be racial polarization by your definition when the black candidate wins the election in a county where there are only 16.2 percent registered voters who are black?

A. Yes, sir.

MR. FLEMING: That's all I have, Your Honor.

THE COURT: Your polarization is a one-way street. You say there's polarization in either race when it's shown to be voting by race?

A. It takes both of them. It takes one voting considerably less than the other.

[338] THE COURT: Go right back to the last race. When you take one vote considerably less than the other you're saying more blacks voted for the black than the white one, but by the same token you're saying more whites voted for him than the white one.

A. Yes, sir, that is the outcome, which I'm not analyzing outcomes.

THE COURT: One other thing. We had a school board race which you pointed out in which, let's see, Dr. Spence lost out in the school board race a little bit later on, didn't he? I believe that's before me. Was it 1976?

MR. BLACKSHER: Yes, sir, on page thirty-six.

THE COURT: We had a school board election there in which every candidate was defeated for reelection. Now, in your figures you don't take in, you didn't put in a factor of incumbency.

A. No, sir.

THE COURT: You ignored that and that can account for a percentage of the votes sometimes too, can't it?

A. Yes, sir, it could, except that I couldn't, it would be impossible.

THE COURT: Okay, so in this particular case here were incumbents who normally have an edge in getting elected, isn't that true?

[339] A. That's what I've been told and I've read in the literature that's true.

THE COURT: That's outside your expertise?

A. Yes, sir, I'm afraid it is.

THE COURT: All right, let's let it go then. In this particular race there were three candidates up for reelection. Two were white, one was black. All three went out.

A. Yes, sir. I didn't analyze that.

THE COURT: As far as you're concerned does that have any effect on your statistical analysis here in that particular race?



A. No, sir, it has nothing to do with it.

THE COURT: You didn't look for other reasons why all three were defeated?

A. To use incumbency I would have to be trying to predict whether a person won or lost. I wasn't predicting whether a person won or lost but the percentage of votes he got in a precinct.

THE COURT: It still remains on overall analysis all you can do is come up with polarization and that does not necessarily mean that blacks can't get elected or that whites always get elected. As far as you're concerned it can't mean that because all you can do is come up with the polarization to show trends to vote race by race.

[340] A. Yes, sir. In fact if you have a single-member districts you could still have polarization easily.

THE COURT: Of course you could still have it.

A. Yes, sir.

THE COURT: Even in a single-member district you might have a black and white running from the district, is what you're saying.

A. Yes, sir.

THE COURT: In fact I guess that's what they're trying to get to, the polarization there. I don't know, when I get through thinking about that one. A single-member district, that's what this thing is all about, get it to a single-member district so that race vote doesn't count. That's about what it amounts to, counsel. That's what we're talking about.

MR. BLACKSHER: I confess I'm not following you, Judge. Maybe I can agree if I understand.

THE COURT: You're trying to go to single-member districts and have them elected, running from that district. No, that's not quite true either. You're trying to get it to where, yes, that is true that you get a district that you have more blacks than whites so if you don't vote for race we get a black one elected. We're looking for polarized voting.

MR. BLACKSHER: Where the preference of the blacks [341] might be registered in the outcome.

THE COURT: It really gets to polarized voting.

MR. BLACKSHER: Yes, sir.

THE COURT: In a district, and overall we encourage people to forget the fact of race in voting. You say we've got a situation where they aren't forgetting so now we go to a single-member district where it really gives some effect.

MR. BLACKSHER: I think that is a fair simplification.

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[Caption Omitted in Printing]  
TESTIMONY OF CHARLIE L. TAITE

[348] CHARLIE L. TAITE, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Taite, have you been sworn? A. Yes, sir.

Q. You've been sworn. Would you give us your full name and address, please? A. Charlie L. Taite, 802 East Brainerd Street, Pensacola, Florida.

Q. What's your age, Mr. Taite? [349] Sixty-four.

Q. And for the record, you are black? A. Right.

Q. Your present employment, sir? A. I am semiretired.

Q. And could you tell us what your prior occupation was? A. A custodial training officer of the Escambia County School Board, Pensacola.

Q. Have you also been in private business? A. Yes, sir.

Q. What kind of businesses have you operated? A. I've operated a grocery store, drycleaning plant and a night club.

Q. Mr. Taite, were you born in Pensacola? A. No, sir, I was not born in Pensacola. I was born in Alabama.

Q. When did you come to Pensacola? A. I come to Pensacola in 1919.

Q. Did you attend school in Pensacola? A. Yes, sir.

Q. Have you also worked for the federal government, Mr. Taite? A. Yes, sir.

Q. When was that and what was your job? [350]  
A. I worked for the federal government first in 1941 as a chauffeur but it turned out after my examination and I was taken on the job that I was given a fork and sent to the coal pile.

Q. Where was this, Mr. Taite? A. At the Naval Air Station, Pensacola, with a white chauffeur driving the truck, and I was supposed to load it for him.

Q. Did you work at the Naval Air Station for thirteen years? A. I did. I went in the service after the first episode. When I came out of the service in 1943, I went back to the Naval Air Station and applied for a mechanic's helper's job.

THE COURT: I'm having a little difficulty seeing all the relevance of the prior history of his background and things he might have done at the Naval Air Station and that kind of thing.

Q. Let me get to it more directly, please. Mr. Taite, did you offer for election to the city council of Pensacola in 1955? A. Say that again now.

Q. Did you offer as a candidate for the city council of the City of Pensacola in 1955? A. Yes, I did.

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[354] Q. Mr. Taite, what made you think that as a black person you would have a chance of actually winning the election to the city council in 1955? There had not been a previous person, a black person, elected previously, had there?

MR. CATON: Your Honor, if I may, and I don't like to make too many objections on leading questions, but he's

assuming various things in his question and he's assuming, number one, that he didn't feel that he could win an election. That's the way the question was phrased.

THE COURT: I don't think he's in a very critical area yet. The objection, I'll let him lead a little bit. It might help us. The objection is overruled.

MR. BLACKSHER: Yes, sir. It happens to be one of the things we've stipulated.

THE COURT: That's exactly right as well. That's exactly right as well.

Q. So why did you think you had a chance to win? A. Because within Ward Two where I lived the ratio of black and white in my opinion was close enough equal until I thought I had a chance to win.

Q. And that was a single-member district? [355] A. Single-member district, right.

Q. Had any black persons to your knowledge prior to this time attempted to run as a candidate for city council? A. Yes.

Q. Who were they and when? A. N.W. Williams and Dr. Polkinghorne. I believe the year was '53. They qualified. And the paper brought out their qualifications, their pictures, and they stayed in the race for a short time and then they came out of the race, for what reason.

Q. So they were out of the race before the election actually was held? A. Yes, yes.

Q. Had you been active at this point of your candidacy in any attempts to increase black voter registration? A. Yes, I had.

Q. Would you tell us what they were. A. They

were from organizational point of view, conducting registration drives, going from house to house, trying to influence people to register to vote in order to be able to help correct some of the injustices.

Q. Were there some organizations that you had formed or you were a part of who were active in the voter [356] registration drives? A. Yes, the Pensacola Improvement Association, the NAACP, were the two principal organizations here at that time.

Q. Okay, sir, did either of those organizations have anything to do with the 1945 law suit that changed the all-white primary? A. The Pensacola Improvement Association did.

Q. Mr. Taite, when did you first register to vote? A. Nineteen forty-eight.

Q. Why had you not registered to vote before 1948? A. Because I wasn't allowed to.

Q. Did you actually attempt to register? A. Yes, I did.

Q. When was that? A. In 1941.

Q. Would you tell us what happened. A. They just told me that no blacks was allowed to register for the Democratic Primary.

Q. This was at the County Court House? A. The County Court House, yes.

Q. Was the city at that time having a separate registration for its elections? [357] A. I believe they were.

Q. Did you ever attempt to go to City Hall to register to vote? A. Yes, I did.

Q. When was that? A. During the same year.

Q. What happened? A. They said that they didn't allow black people to vote in the Democratic Primary. Therefore I couldn't register.

Q. Mr. Taite, do you know of any black persons who did vote during the pre-1945 days in city elections in Pensacola? A. I don't know of any person that voted in the city election in Pensacola at that time. I do know that several people were contacted to vote and I happened to be one of them and we were asked if our names could be used.

Q. Wait a minute, you'll have to explain yourself. When were you contacted and who contacted you? A. In 1940, I'm not sure of the year, but I believe it was 1944 or '45, one of the two, and the two candidates were running and the power structure was interested in a particular candidate being the winner and several of us was contacted by a Mr. Tyler, who is not [358] living now, relative to using our names as voters to help this particular candidate win.

Q. Were you actually asked to come down and cast that vote? A. No, I was not.

MR. CATON: Your Honor, I'm going to have to object to that, what he was asked to do by someone that's not here. That would be hearsay testimony.

Q. Who was this person, Mr. Taite, that asked you to come —

THE COURT: Is he living or dead?

Q. Who contacted you?

A. Mr. Tyler.

THE COURT: Is he living or dead?

A. He's dead now, I believe.

THE COURT: I think I'm going to let that in under the exception. Objection overruled.

Q. I'm sorry, I didn't get your answer to the question. Did he actually ask you to come down to the City Hall and cast the vote? A. No, he didn't. He asked if my name could be used.

Q. What did you say? A. I told him no, it couldn't be used unless I could go down and cast the vote. Then I would permit him [359] to use my name

Q. Mr. Taite, would you tell us how you conducted your campaign for city council in 1955. What were some of the tactics that you employed to make yourself known to the voters? A. The first thing I done was I went to the Interdenominational Ministers Alliance and announced my candidacy. Also to the Baptist Ministerial Alliance and the Methodist Ministerial Alliance. I had no organization. I got the approval of the ministers. I also had the approval that I could make some speeches in some of the churches. There was a gentleman here, the late C.C. Harvey, who delayed his vacation in Pensacola to help me in my campaign. I used the tactics of going from house to house, knocking on doors and talking to people, and I went to every house within Ward Two.

Q. Well, how did you know what the boundaries of Ward Two were? A. Well, we got the boundaries from the registration office and if my memory serves me right the boundaries for Ward Two was then, on the west was somewhere about Spring Street.

THE COURT: Well, he just asked you how you got them. We don't have to get into that.

[360] Q. Did you knock on the doors of white people? A. Yes, I did.



Q. Okay, sir, and did any of the, did you ask the white people to vote for you? A. The few that would listen to me. Most of them turned me away, but the few that would listen to me, I did ask them to vote for me.

Q. Mr. Taite, during that campaign in 1955 were you contacted again by Mr. Tyler, whom you mentioned earlier? A. Yes, I was.

Q. Would you tell us what happened. A. Mr. Tyler came to the grocery store where I was operating the store and asked me if I was willing to come out of the race because I couldn't win and I told him no.

MR. CATON: Your Honor, I object again. Excuse me, Mr. Taite.

THE COURT: This is going pretty far, sir.

MR. BLACKSHER: Your Honor, this, we think, is important testimony. We ask that it be admitted under the dead man exception.

THE COURT: Under what evidentiary rule? I went a little bit further with you under the exception in the rules because the man was dead but now you're getting [366] intimidation and so forth up to date, and we were trying to show that this sort of thing did happen in recent times.

THE COURT: Yes, of course, and when you say recent times, it's some twenty-three years ago, so I don't think it's so very recent. And the rest of it is that to me, anyhow, let's go ahead with it.

MR. BLACKSHER: Yes, sir.

## DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Did Mr. Tyler identify himself to you as an agent of any other public official? A. Yes, he did.

Q. Who was that, sir? A. Congressman Bob Sikes

Q. You say you had one volunteer helper in this campaign, Mr. Taite? A. One volunteer helper, yes, sir.

Q. Could you tell us — A. C.C. Harvey.

Q. Could you tell us how many friends or helpers you had observing the polls on election day? A. At precinct 29 the late Robert Walker. At precinct 27, Deacon Greer, Gibbons Greer. And at precinct 28, George Powell, I believe, was his name. At [367] 30, Attorney Wilson, who was guiding the legal end of my campaign, was supposed to have been someone there, to my knowledge, but there was no anyone at precinct 29

Q. So you're saying you had somebody watching three of the four precincts anyway? A. Yes, sir.

Q. Okay, could you tell us if you attempted to observe the counting of the votes at the precincts you were watching? A. Yes. When the polls closed, I tried to find out from the clerk the number of votes in precinct 29.

Q. I'm sorry, I didn't understand. You tried to find out what? A. From the clerk the number of votes casts at precinct 29. She refused to tell me. Mr. Walker and I followed the clerk to the City Hall to see the votes counted and when we got to the City Hall they allowed the officials with the box to go in the City Hall.

MR. CATON: Your Honor — excuse me, Mr. Taite. I'm going to interpose objection as to this type of testimony. Evidently what he's testifying about concerns

perhaps the conduct of the election or how the votes were casts, and he would have a legal remedy at that time and I don't know the materiality or relevancy.

[368] THE COURT: You may take him on cross examination on that point. Objection overruled. Go ahead.

Q. You may continue. A. And when we got to the City Hall, we were told that Mayor Mason had won the election by sixty votes and he had gone home. I asked the question if we would be allowed in the City Hall to observe the count and we were refused, so we didn't get a chance to see any of the count. We had to take their word for it.

Q. Now, you say that someone told you that Mayor Mason had already won before the box from 29 was counted? A. The election officials at the City Hall, yes.

Q. Mr. Taite, did you hear any radio broadcasts that day concerning this campaign? A. Yes, I did. On several occasions WCOA broadcasts between 3:00 and 4:00 o'clock that unless the white people get, at home, get on the telephone and begin to call their friends —

MR. CATON: Your Honor, we're getting into hearsay again. A. You would have a black councilman next day.

[369] THE COURT: He's not within the hearsay exception. This is not offered for the truth of what it is. It is offered for the fact the statement was just made. Objection overruled.

Q. You were interrupted. Would you please continue with what was said on WCOA. A. The announcement was being made over WCOA between 3:00 and 4:00 o'clock for the white people to get on the telephone and call other white people within the Ward and ask them to be sure and get to the polls and vote before 7:00 o'clock, "Or

we will wake up the next morning with a black city councilman." Because at that time I was leading Mayor Mason by a substantial number of votes.

Q. Well, let me ask you, Mr. Taite, you said you went from door to door, even to the white community, to the houses of white people in the Ward. Weren't you concerned that your presence might turn out a heavy white vote against you? A. The method I used, I thought, would be a low key. I didn't go to these houses dressed as a potential threat to a candidate from an intelligent point of view. I went to these houses with common clothes on. I was clean but they were common clothes and in talking to these people I felt like that they would just discard [370] me, disregard me as being a kind of a busybody rather than a serious candidate, and that way I might not have the hate group against me because of the fact that they'd figure, "Well, he doesn't look intelligent, he's not going to be a threat to anybody, so we'll just overlook him."

Q. Okay, Mr. Taite, after the election in 1955 were there any changes made in the boundaries of Ward Two?

A. Yes.

Q. Would you tell us what they were and how they affected you. A. The boundaries within Ward Two was moved further out to take in more white voters.

Q. Which direction was it moved? A. It was moved east from the present Eighth Avenue intersection over to —

MR. CATON: Your Honor, excuse me, I just noticed he made a statement I wish to object to and make a motion to strike. He stated the boundaries were moved east, I believe, and then he concluded that by saying, "To include

more white votes." That's a conclusion of the witness that he's not qualified to make and I move to strike that.

THE COURT: You're probably right, sir, but you [371] could take him on cross examination. The rest of it —

MR. CATON: I would like to move to strike that statement from the record.

THE COURT: I'm going to let you cross examine him to find out whether he knew in fact about it.

MR. CATON: Could I get a ruling on the motion?

THE COURT: The motion presently is denied.

MR. CATON: Yes, sir.

THE COURT: You may renew it at a later time, sir. Aren't you getting into beyond that area? We don't need testimony from him. We have testimony that from 1957 or '56 that some boundaries were moved out, but are you getting into something already stipulated or agreed?

MR. BLACKSHER: I don't think it's stipulated. There's prior evidence, and if Your Honor please, the only reason —

THE COURT: Go ahead. I thought you were getting into something again. There may be some argument about why it was moved but I thought the fact it was moved and it took in people was stipulated. I may be wrong. Go ahead, sir. I guess we'll save time with you going ahead.

MR. BLACKSHER: I thought it would be helpful to have in the record indication of what these [372] changes that we talked about on paper meant to a politician on the ground.

THE COURT: I had assumed it was stipulated. If it wasn't, go ahead.

MR. BLACKSHER: But, Your Honor, I'll not pursue the point. I think that's all for the plaintiffs.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. CATON:

Q. Mr. Taite, I believe you have run in just the one city council election, is that correct, in 1955? A. That's correct.

Q. And you never did run for any other political office in the city. Did you ever run for any office anywhere else in Escambia County, school board, anything? A. No, I have not.

Q. You are aware that Dr. Spence ran for office at one time and was unsuccessful and later ran again and was successful? A. Yes, I am.

Q. Was this the first time you had ever run for office, any elective office? A. You mean —

Q. The '55 election? [373] A. That's the first time, yes.

Q. Did you have any prior experience with any type of political campaigns? A. Yes, I did.

Q. What type of experience did you have? A. I had experience in working in campaigns with various candidates over the years.

Q. Which various candidates? A. County commissioners, the sheriff's department, the legislature.

Q. And these were white candidates or black candidates? A. They were white candidates.

Q. So you got along okay with some of the white peo-

ple in the community also? A. We didn't get along with them in a sense. It was a forced situation where you couldn't run and you had to work with somebody in order to be able to —

Q. You were forced to work in the campaigns? Is that what you're telling us? A. Do what?

Q. You were forced to work in their campaigns? Is that what you're telling us? A. Mentally, yes.

Q. Mentally? [374] A. Yes.

Q. Could you explain that a little more to me, how they go about mentally forcing you to work in their political campaign. A. Well, that's easy to explain. When you don't work in campaigns, then you don't get a chance to know the people who is going to control the government. So in order to know the people that's going to control the government you have to be active in the campaign.

THE COURT: That's all you meant by that statement? A. That's all, yes.

Q. But you voluntarily worked for these other candidates?

THE COURT: Nobody forced you to do it? You were doing it yourself because you wanted to know the candidates better? A. I wanted to know the candidates in order that I could survive. My job depended on them.

Q. Incidentally, your job, did you say you worked at the Naval Air Station? Is that the job you're talking about? A. Not necessarily. I worked for the Naval Air Station. I worked for the school board for twenty years and I worked at some private jobs and I run businesses [375] here. So I've had a variety.

Q. Yes, sir, you've had several, but immediately prior to the 1955 election — A. No, I didn't work at the Naval Air Station.

Q. Okay, when did you work at the Naval Air Station? A. I worked at the Naval Air Station about a year before. I left the Naval Air Station about a year before I run.

Q. And were you under the Civil Service System at the Naval Air Station? A. Yes, I was.

Q. And how did your employment terminate? A. It terminated on the premise of intimidation, bringing in certain accusations against a man that had no witnesses to prove that it was right or wrong, simply because I asked for my rights as a citizen at the Naval Air Station to be able to work at a job that the white was working, meaningful jobs that paid good salaries, and was refused, and I lost my job as a result of that. But they camouflaged it and said it was insubordination.

Q. They camouflaged it and charged you with insubordination? A. Right, and I've never been able to straighten that out.

[376] Q. So you were discharged for insubordination? Is that what you're telling us? A. No, I'm not; I'm telling you that's what they said.

Q. I see. Did you have any type of hearing at the time? A. Yes, I did.

Q. And what type of hearing did you have? A. I had a hearing before an all-white board of committees at the Naval Air Station, a white prosecutor and white jurors and no blacks.

Q. I believe you said there was no witnesses against you. A. No witnesses against me?



Q. Yes. A. I don't remember saying there was no witnesses against me.

Q. Well, did anybody testify against you at that hearing as to your insubordination?

A. All of the whites testified against me, yes, so certainly.

Q. And you were allowed an opportunity to present your case? A. I was not allowed an opportunity to present my case. They refused me the opportunity of having legal [377] counsel. They refused me the opportunity of representing myself. They said I could get some employee off the Naval Air Station to represent me but I could not have a lawyer.

Q. They told you you were denied the right to have a lawyer? A. They denied me.

Q. Either that, or did they refuse to pay for it? A. They denied me.

Q. Did you ask them if you could hire your own attorney? A. Yes, I did. I even named the attorney, and they went far enough to tell me that John M. Coe was a Communist and he's not allowed on the station. That was the man I was going to hire.

Q. Did they say you couldn't hire another attorney besides Mr. John M. Coe? A. Yes, they did. They told me I couldn't have another attorney to come on the station.

Q. Who is "they"? A. Beg pardon?

Q. Who is "they" that's telling you all these things? A. Mr. Foster.

[378] Q. What position does he hold with the Naval Air Station, or did he hold? A. He was the top man at

the Naval Air Station in the civilian capacity. Mr. Vinyard, who was his assistant; Mr. Vinson, who was assistant to him; Mr. Villar, who was the immediate supervisor.

Q. And you're telling us that all these top officials at the Naval Air Station under the Civil Service System told you you could not have an attorney to represent you?

A. Yes, they did.

Q. And you subsequently decided to run for the City Council of the City of Pensacola, is that it, after you were terminated? A. Yes.

Q. Could you briefly go over again your campaign in that particular election? I believe you said you had one volunteer helper. A. One volunteer helper.

Q. Is there any particular, did you ask other people to help you in the campaign or just nobody else volunteered? A. I asked a few people to help and the most of the people that I asked to help was afraid they might lose their job if they helped me campaign.

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[399] REDIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Taite, have at-large elections in the city elections as well as in the school board and county commission had any effect on your not offering as a candidate again since 1955? A. Yes.

Q. Why is that, Mr. Taite? A. Because of the expense —

THE COURT: You're plowing new ground, aren't you, Counselor. You're opening up a new area.

MR. BLACKSHER: No, sir. There was testimony, there was cross examination of Mr. Taite Concerning his willingness to offer in the election that he did run in and he was not afraid to offer, and why he did, and I was just trying to close that up, why he was willing to offer.

THE COURT: I'll let you go ahead but if you get them on their feet again, then you do. Proceed, sir.

Q. Excuse me. You may answer it, Mr. Taite.  
A. Because of the expense incurred in an at-large election and the chances of winning, would discourage anybody.

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#### TESTIMONY OF OTHA LEVERETTE

[401] OTHA LEVERETTE, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

BY MR. MENEFFEE:

Q. Reverend Leverette, were you sworn the first day of trial? A. Yes, I was.

Q. Would you please state your name and address for the record. A. I'm Reverend Otha Leverette, 1541 East Leonard Street, Pensacola.

Q. Thank you, sir. And at what church are you pastor, please sir? A. Saint John Devine Baptist Church.

Q. How long have you been there? [402] Fourteen years.

Q. When did you first come to Pensacola? A. The second time, 1964.

Q. Okay, sir, and when was the first time then? A. Nineteen forty-one.

Q. How long were you in Pensacola at that time?  
A. I was here from '41 until '48.

Q. Okay, sir. Reverend Leverette, have you offered yourself as a candidate for public office? A. Yes, I have.

Q. And when was that and what position? A. Nineteen seventy for the school board, district four.

Q. Place Four? A. District Four.

Q. District Four. Were you a candidate in the Democratic Primary? A. No.

Q. Would you please explain. A. Well, I didn't have any opposition in the first election, in the primary. I didn't have opposition till I got to the general election.

THE COURT: Well, you did run in the primary without opposition? Is that what you're saying?

[403] A. I didn't have any opposition.

THE COURT: I know, but you were entered in the primary? Yo had no opposition?

A. Right.

THE COURT: You ran in the primary as a Democrat or Republican?

A. Democrat.

THE COURT: I see. And you had no opposition in the Democratic primary?

A. Right.

THE COURT: And then you had opposition in the general election?

A. Yes, sir.

THE COURT: All right, sir.

Q. And who was your opponent in the general election? A. Mr. Leeper.

Q. I see, sir. And what was the result of that race? A. Well —

Q. Who won? A. He won.

Q. Okay, sir. He was the Republican nominee? A. Right.

Q. Okay, sir. Have you ever run for public office [404] other than this one time? A. No, that was the first time.

Q. Okay, sir. Have you ever run for public [404] office other than this one time? A. No, that was the first time. on the school board and I felt like there should be a black on the school board.

Q. Okay, sir. Why did you decide to run for the school board as opposed to county commission or perhaps city council? A. Well, at the time I just decided to run for the school board because I had, well, I had a wife teaching in the school system, had sons and daughters teaching in the school system, a lot of members teaching in the school system, and I just thought that I would run.

Q. Okay, sir. How did you assess your chance of winning when you offered yourself as a candidate? A. Well, I didn't have, I didn't feel like I had much of a chance and what I did, I ran a low key campaign, and to tell you the truth, they really didn't know who I was.

Q. Who is "they"? A. I mean the whites. They thought I was white.

MR. RAY: Objection, Your Honor, to hearsay.

THE COURT: Objection is sustained to that one and that last answer is stricken from the record.

Q. Reverend Leverette, by the time of election was it public knowledge that you were a black running for office? A. Say what now?

MR. RAY: Objection to hearsay. That's the reverse side of the coin.

THE COURT: When you say it was public knowledge, I don't see how you can.

MR. MENEFEE: Well, Your Honor, I think we had a stipulation that pictures were regularly published in the paper.

THE COURT: You have that stipulation in there someplace but now you're asking him to get it to an area which is just completely hearsay. Objection sustained.

Q. I'll go directly to that. Reverend Leverette, by the time the election occurred was your picture published in the papers or campaign circulars? A. No, not my picture, and I never did, I never did get on television. They tried to get me on television and I never did get on television. I stayed off television.

Q. Was your picture ever published in flyers put out by the Democratic Party? [406] A. yes, my picture was published by flyers here, "Meet the Democrats."

Q. I see. Okay, sir.

THE COURT: What kind of a publication? Oh, that was just campaign literature that was passed out at the time?

A. This was just before the general election.

THE COURT: Yes, sir.

A. Probably a week before.

THE COURT: Yes, sir.

Q. And that was put out by the Democratic Party?

A. Right.

Q. Okay, sir. Reverend Leverette, would you describe your efforts to raise funds to conduct your campaign, what success and difficulty you had.

A. Well, I had a hard time trying to raise funds for my campaign. I'm pastor of a large church and our members, they helped me to raise campaign money. For example, I called several places. I called some of the banks and was telling them, you know, I'd like to have a donation to run for public office, and what they told me, said, "We ain't going to waste no money up on you," and they knew me.

MR. RAY: Objection, Your Honor; hearsay.

THE COURT: He is getting a little bit far on [407] this one too.

MR. MENEFEE: Yes, sir.

THE COURT: That was hearsay, of course.

Q. Yes, sir. How much were you able to raise to conduct your campaign, Reverend Leverette, approximately? A. Approximately twelve hundred dollars.

Q. I see, sir. How large is your church, Reverend Leverette? A. We have about a thousand on the roll. About six hundred fifty attend morning services every Sunday morning.

Q. Okay, sir, how did you conduct your campaign in the black community? How did you approach blacks in the community? A. Oh, I just asked them to vote for me and I said to them that I was running. I said, "You vote for the best man." This is what I done, just get out and asked them to vote. I went from door to door.

Q. Okay, sir, did you also solicit votes in the white community? A. Yes, I did.

Q. How did you do that? A. Well, I had some friends, for example, that was in 1969, the last of '69. There was a meeting held in Cordova Park by Dr. Ralph Chandler and several other [408] persons, and Reverend Brooks and Reverend Matthews and Mr. Marshall and their wives and myself, we was invited. So in this meeting there I expressed to them that I had, I was going to run for school board, and Dr. Ralph Chandler, he wanted to run for school board. After he decided I was going to run he said, well, he wouldn't run and he said I didn't have a chance, and so I said to him, I said, "Well, I'm going to run, chance or no chance. I'm going to run." So we had this meeting and out of this meeting I just made up my mind I was going to run.

Q. Okay, sir. Was your race a factor in your defeat in this election? A. Yes, I know it was. Up until, as I said, up until, just up until this went out, maybe I would have won the election up until this went out but after this went out I had members who works at Monsanto and the paper-mill and Navy Yard and different other places and people in other churches, and after this went out, when they say that I was black on this picture here, they come back and said to me, said, "Reverend," said, "They said they're not going to vote for you because you're black," and they thought I was white and they said they changed their mind and they didn't vote for me.

Q. How did other Democratic candidates fare that year on the Democratic Ticket? [409] A. Well, all of the Democrats won but two on here.

Q. Who else lost? A. Mr. Ray Meador, he lost, and Mr. Clyde Touart. All of the others, they won.



THE COURT: That was three of you? You were on there too?

A. That's right, I was on there too.

Q. What offices were those other two Democrats running for? A. One of them was running for sheriff, I believe Mr. Touart, and Mr. Ray Meador was running for state representative.

Q. Okay, sir. Was there also being held at the same time the governor's race? A. Yes, it was, 1970.

Q. And who was the Democratic nominee at that time for governor? A. You mean for governor?

Q. Yes, sir. A. Governor Reubin Askew.

Q. I see. And he was successful? A. Yes, he was successful.

Q. With this experience have you considered running again for at-large election in the county? [410] A. No, I wouldn't run, not unless something changed, not like it is now, because I wouldn't have a chance because they know who I am now. I can't fool them no more now. They know who I am. And then I've been discouraged so much by my own family and my membership. They said no use of running, say no use of running, no blacks can win. We have only one black, well, two blacks, have ever been elected to public office here in the county.

Q. Okay, sir. Thank you. During the campaign did you encounter any difficulty encouraging black citizens to turn out and vote for you? A. Black citizens?

Q. Yes, sir. A. No, I don't believe so, not the black.

Q. Okay, sir. A. I received some phone calls. I don't know who it was, though. I received several phone calls and still receive some phone calls.

Q. Just a moment, sir. During the campaign did you receive any threats or harassment? A. Yes, I did.

Q. Would you please tell us about those. A. I received several phone calls saying, saying, "You're too smart, nigger, you got to die." Said, "Nigger, [411] you're going to have to get out of town. You must not have been born here, Nigger. You must have come from somewhere else."

Q. Okay, sir. A. And then just hang up. I don't know who it was. They'd just hang up.

Q. Okay, sir. Did you approach any white political leaders for assistance during your campaign? A. Yes, I did.

Q. And what sort of response did you get? A. Well, Sheriff Bill Davis, he was in office then. He helped me some and I helped him some. I didn't get any finances out of him but just, you know, we kind of worked together.

Q. Did you, the night of the election when the results were coming in, have, what expectation did you have the night of the election when the results were coming in as to your success? A. Well, I had high hopes. I was leading.

THE COURT: Counsel, with all deference to you, any man running for office always has high hopes and high expectations. I don't know what that's got to do with anything about this case.

MR. MENEFEE: Okay, sir. Judge, I think there was a particular incident that Sheriff — [414] Williams and Don Spence, both of whom were elected to the city council. How do you account for their success, very briefly? Mr. Williams has won twice in opposed races and Dr. Spence has been successful one time for city council. How

do you account for their success in the city elections?

A. Well, before -

MR. CATON: Your Honor, before the witness answers that question, I don't know that he's been qualified as an expert to give such a political opinion as to how he accounts for it.

THE COURT: I don't know that it's calling for expert testimony. This is giving what he believes is the reason for it, I believe. We can let him answer and you can move to strike it. If he gets to an area he can't testify you can move to strike.

MR. CATON: If I could just state my other grounds. Even if it's a nonexpert opinion then it has no relevance in this case.

THE COURT: I'm going to let him answer the question, sir.

Q. Thank you, sir. Go ahead, Reverend. A. Well, Hollice Williams was appointed first to the city council. After he was appointed to the city council he went in and Hollice Williams doesn't, he just

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## TESTIMONY OF DR. DONALD SPENCE

[460] DR. DONALD DALE SPENCE,

Called as a witness by the plaintiffs, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. MENEFFE:

Q. Would you please state your name and address for the record. A. Donald Dale Spence.

THE COURT: What was the name? A. Donald Dale Spence.

THE COURT: You said F. L. Henderson.

DEPUTY CLERK: I'm sorry, Your Honor, somebody gave me the wrong name.

THE COURT: This is Dr. Spence?

A. Yes, sir.

Q. Your address, Dr. Spence? A. 617 North DeVilliers Street, Pensacola, Florida.

Q. Okay, sir, what is your occupation? A. I am a dentist.

Q. Okay, sir, when were you admitted to the practice of dentistry? A. Nineteen sixty.

Q. Where did you attend high school? [461] A. Johnstown Catholic High School, Johnstown; Pennsylvania.

Q. And college? A. Morris Brown College, Atlanta, Georgia.

Q. Graduate school? A. Howard University, Washington, D.C.

Q. When did you finish at Howard University, please?  
A. Nineteen sixty.

Q. Nineteen sixty? A. Yes, sir.

Q. When did you come to the Pensacola area?  
A. I came to Pensacola in 1950.

Q. What occupation did you have prior to becoming a dentist? A. I've been an insurance agent in Pensacola. I've been a high school teacher, a high school principal, Naval Air Station apprentice, Naval Air Station licensed mechanic and a practicing dentist and a newspaper reporter.

Q. Thank you, sir. Dr. Spence, would please tell us on what occasions you have offered yourself as a candidate for public office. A. I have been a candidate for public office in Escambia County, Florida, on three separate occasions. [462] I've run for the city council on Pensacola twice and I ran for the Escambia County School board once.

Q. Okay, sir, and when was the first time that you ran for the Pensacola City Council? A. Oh, I think it was 1964.

Q. Sixty-four? A. Sixty-four or sixty-three.

Q. Okay. And when was the second time that you ran for the Pensacola City Council? A. I think it was about '75, '74 or '75.

Q. Okay, sir.

THE COURT: You said the county commission, I believe, Doctor. A. No, sir, I said the county school board.

THE COURT: You ran twice for the county commission? A. No, I ran twice for the city council.

THE COURT: City council. Thank you, sir. I was a little mixed up. And once for the school board? A. Once for the school board.

THE COURT: All right, sir. The first time you ran for the city council was when, did you say? A. Sixty-four.

THE COURT: All right, sir.

MR. MENEFEE: Excuse me, Your Honor, that was [463] 1963. I think that's correct.

THE COURT: Do you accept his correction? A. Yes, sir. Yes, sir, '63 or '64 term, something like that.

Q. And then in 1976 did you seek election to the county school board? A. Yes, I did.

Q. Dr. Spence, have you been active in politics other than on these three occasions? A. Yes, I've served on campaign committees for Haydon Burns and Senator Stone and I've tried to help Judge Joseph Hatcher and any number of black candidates that have run I've helped, so I've been active in politics, either running or trying to get people registered to vote or trying to instruct people in the need for voting or trying to help other candidates get prepared. So I think that all of my life in Pensacola I have been concerned with politics and I've been very much active in it.

Q. Okay, sir. For the record, are you black? A. Well, I guess so. I really, the term "black" eludes me in a lot of cases because I think that being perfectly candid, when you say black, I'm a Negro.

Q. Okay, sir. A. And to me the term, classifying all

blacks, [464] all Negroes as black, to me is not a good term because when I was a child coming up if you called all Negroes, "You are black," you would get a black eye from it. I was taught by my mother and father to call people by their names and the term, "Are you black," and all of the blacks believe this, it doesn't ring a good bell with me. So I'm a proud American Negro.

THE COURT: You make the distinction between Caucasian and Negro races and not between black and white races? Is that what you're telling me? A. That's what I'm saying.

THE COURT: Thank you, sir.

Q. Thank you, sir. I just wanted it to reflect in the record. Dr. Spence, you've just told us you've been active in some efforts to encourage voter registration. Would you please describe some of your efforts there and give us some dates when you were active. A. Well, you can just name all of the years and I can look out in the audience and I can remember the weekend that Reverend Kendrick's wife and myself and Miss Sue Lewis sitting over there and some of us put approximately nine hundred minority voters on the books, going house to house and so forth.

THE COURT: That was in a voter registration drive? [465] A. Voter registration drive under the auspices of the NAACP. And I see Mr. McCray. We tried some of the, we had a black Jaycees here some years ago and we started Little League baseball and we also pushed off into a voter registration drive. I think that every time you meet with a group of ministers we talk about what can we do to get people registered to vote. So I think for black professional man in Pensacola or Escambia County, I think that your whole life, if you believe in politics, I think every day

you live the life of trying to upgrade our people into registering and voting. And I think that you just are involved almost intimately with all of your contacts, your social clubs, your fraternities, your churches, just a constant thing, "We need to vote, we need to take care of our heritage."

Q. Okay, sir. Dr. Spence, what prompted you to seek election to the city council in 1963?

A. Well, when I came to Pensacola, I came to Pensacola as a teacher, insurance man, and became a teacher, and one of my students was Charlie Taite and Charlie Taite at the Adult Veterans School, I'd heard rumors down through the years in Pensacola of the great injustices that were done at a particular time. I don't know the details of it. It was sometime in the space of first black man to run for an office in the City of [466] Pensacola was given a great injustice due to the fact that when he went to bed at night there was almost a tie race or the black candidate was way ahead of a very knowledgeable, influential white person and the next morning when he woke up, the election was all, you know, the other way around and the black candidate, who happened to be Charlie Taite, was soundly defeated. And whenever I would have a social studies class, in those days in high school you taught science, English, math, whatever, you taught the course out of secondhand books but you had to teach the course, and I'd say, "let's have a social studies discussion." Then automatically it would be, "Well, what about whites and blacks in politics. When a black person votes, does it really count?" And then I would say, "Why, sure," and I could quote the list of presidential elections where one vote turned the election around and so forth and say, "Your vote does count," and invariably I'd be slapped in the face,



"Let me tell you one about what happened in Pensacola," and then that Charlie Taite got beat and the election was, they thought, taken from him, and they said, "Well, Doctor, Mr. Spence, why don't you, you know, run for election for something?" And I think down through the years this was in the back of my mind. So I went off to dental school and came back and when I [467] came back there was a cry in Pensacola, "Black people need to get involved in the political aspect. You need to do this, you need to do that. Dr. Spence, you are the one to do this. Dr. Augustus put out the school board suit. Mr. Jones did this. Now it's your turn to pay your more or less dues to the community. You can't be hurt. You work for yourself. I can't do it. I work for the City of Pensacola. I'll lose my job. I can't do it. I work for the school board. They'll fire me." Or if it's a lady, "I work for Mrs. Anne, and she wouldn't have me back if I do so and so. You are the one. They can't get you, Doc, so you run and we will back you." So I had an innate desire to be in politics. I love my country and I love Pensacola and this county and I think if I'm going to make my living here, if I am to take from what Escambia county has to give me, I think that I owe it to Escambia County to serve on some of its boards to help set the policies of this county. I think it's every black man's duty in this county to register and to vote and to run for public office one time in his life, whether he's beaten or not. I think he should run. I think you should try to give something back to the county that supports you. I make my living here. I reared my children here and I want to help set the policy here, and I did this out of a commitment [468] to my county and my country.

Q. Dr. Spence when you made this decision to run, how did you assess your chances? A. Well, when I ran for city council the first time, you're speaking of?

Q. Yes, sir, 1963. A. Well, when I ran at that time there weren't as many blacks registered to vote as there were now. There was still a certain fear possibly in the hearts of some people from the old school about registering to vote and getting involved and so forth. You'd see them at the poll, you know, but I thought the people I knew, and I thought I was a pretty nice fellow and easy to get along, and I thought I was reasonably intelligent and I thought I could read and write and I thought that I could, you know, contribute to the county, I mean to the city council. I also was aware of the fact that the man I as running against was a pretty strong candidate. I thought that I would run close under him at that particular time.

Q. I see. What were the results? A. If I'm not mistaken I think I ran in a runoff with him and I think he, I ran in the runoff, I'm pretty sure, and he beat me in the runoff. I got a runoff with him and he beat me and he went on to become the Mayor of Pensacola.

[469] Q. Dr. Spence, how did you conduct your campaign in 1963? What sort of media did you use? How did you contact the voters? How did you raise funds and what success did you have? A. Well, I didn't raise many funds. You know, it isn't too fashionable, not too fashionable, I would say, among people in the lower income brackets to give a lot of money to political campaigns. They'll give you their vote but at that first election I don't think I had much money. I think the way I got around, I went to my fraternity, my church, my friends, and asked them to pass the word around, "Let's get some pride up," putting me there. I didn't know many people of the other race to talk to except the ones I worked with at the Naval Air Station. No, I wasn't working at the Naval Air Station, excuse me. Patients that I would see and people that you would meet in just your general walk through

life. So I didn't have any money other than what I had in my own pocket for this political campaign. I probably have, as I did in all my campaigns, I made the cardinal sin of not attacking my opponent. I've never attacked another opponent I've run against. When I ran for the city council, I wanted the citizens of Pensacola and Escambia County to elect me, and I've said this on all offices I've held. I don't want you to think of me as just being a [470] Negro candidate on a board. I want you to think of me as a thinking person who can do something for you. I don't want you just to say, "I'm going to vote for him because he lives on my street." I want you to say, "I want to vote for him because I saw him figure out this problem. He did pretty good." So I never attacked anyone that I ran against. I knew plenty of things that I could have used and they probably knew some things they could use but in any of my campaigns I never had any personal attacks and neither did I make personal attacks. I just stated, "I wanted to be your candidate and I'm qualified. I'll do a good job and I'm alert," and so forth, and that's the way I campaigned.

Q. Okay, Dr. Spence. When the results were in, and now looking back on it, how do you assess the fact of your race as it interacted into the results of the election? A. Well, I've made many mistakes in my life and I made a very big mistake right after the first time I ran for city council. I remember very vividly I was called on the, I was at a victory party and a friend of mine, Calvin Harris, who died, and we were having a sort of a semi-celebration, and I remember, I don't know whether Mr. Morgan called me or someone from WBOP called me and they said, "Dr. Spence, how do you feel? You've just been [471] beaten for your city council election. How do you feel at this time?" And I became very, very indig-

nant because I said that in somewhat frenzy, I remember what I said and they washed my face with it for fifteen years, I said, "If the black people in this community would get up off their seats and vote that we could turn this county around and I could have won this election if you had done what you're supposed to." And of course I didn't say it as nicely as that. And of course my friends told me about that down through the years, "Dr. Spence, so and so and so." But lately after I became elected to office and I had access to records of things I found out that the black people in Escambia County, and I must apologize for my years then, the black people in Escambia County can be applauded because based on percentages they've done as well as anyone else in voting. Every race that I ran for election, my people came forth and voted for me in black or nearly all-black precincts to the tune of approximately 94, 95, 96 percent. When a white candidate ran in the same precinct when there was no black candidate running, they voted three or four percentage points lower. In the white precincts I didn't do as well so I must apologize to my black constituency. They voted, say on, based on a hundred voter basis, when I was running or some of the other black candidates were running, they [472] would vote 28, 29 percent, anywhere between 25 and 29 percent of the black registered voters. The white registered voters in this county vote 25, 26 percent. So I'm saying that when I was running black people came out. They voted to their capacity, so I apologize. The black people did stand behind me. They did vote, but I didn't have a chance with just those five precincts.

Q. Doctor, back to my question. Was your race a factor in your defeat in that election? A. I would think so.

Q. How would you describe it, as a major factor, a minor consideration? A. I would make a statement in

my personal opinion if the Lord himself was black and ran for political office in Escambia County he'd be defeated.

Q. Okay, sir. Dr. Spence, let's move on to the most recent city council race. You were appointed to the city council in 1974, I believe. Would you please tell us how that came about and then we'll get into the election itself. A. Well, I don't know exactly how, If I may digress, I don't want to take up too much of your time but I think law is probably something like history. You've got to go back and go back to how it first came. The first time that, when right after my defeat for the city council, [473] two or three months later or whatever time frame it may be, there came a vacancy on the City Council of Pensacola. The particular candidate that defeated me called me on the phone and he said, "Dr. Spence," he said, "I respected you because of the fact that when we had our race you didn't attack me as a black man attacking a white man because we were running for the same job and we just talked about what you could do and what I could do." And he said, "And I'll always respect you as a gentleman and I'll always respect you as a man and now I want you to do something for the City of Pensacola." He said, "There is a vacancy on the city council and there are certain people in the community feels that it's time that a minority takes its place in the politics of this county and we feel that if we could get a black person appointed to the city council at this time there would be a fairly decent chance that he would be elected in the next election and we would have our foot in the door of Escambia County-Pensacola politics. Would you accept the job on the particular city council?" I told him, I said, "Well, you know, I'm a Sagittarian and I don't particularly like gifts but I probably would, you know, consider it, if you gave me the oppor-

tunity. I'd hate to say that I couldn't get elected and I had to be appointed."

Q. Excuse me, Doctor, about what time frame is this?

[474] A. I would say this is right after I ran for the city council and lost. I would say it would have to be about a year. All right, they checked it out and they come to find out that District Five runs from "A" Street, District Five runs from "A" Street west to the end of the city line and District Four picks up at "A" Street and comes east, going east to, I think, all the way over to Sixteenth. I'm not sure. I think, all the way over to Sixteenth. I'm not sure. I think that's the frame. So they told me that since I live one block east of "A" Street that I could not be appointed to the city council because the man that left the city council was from District Five. So the gentleman asked me then, "Will you form a committee that will search the black community to find a man that would be acceptable to be appointed to the city council?" And we had the meeting in my office on DeVilliers Street. Let's see, I don't know anyone here that was in that particular meeting but I know we came up with the candidates for this particular office. We recommended, I think it was Benno English and we recommended Hollice Williams and we recommended the little fellow, I forget his name, but anyway, recommended four persons. So I called the gentleman back and told him we'd come up with these four people, and he said, well, Hollice Williams was well [475] known and quite acceptable and that there would be a possibility if there were no, anyone in the black community that had anything against this, that more than likely they could get it through that Hollice would be appointed, and that's when Hollice Williams was appointed.

Q. Now, that was 1971 that he was appointed?

A. Was it?

Q. Or seventy? A. Was it?

Q. Nineteen seventy? A. Well, whenever it was, the same man called me in the time frame. So after Hollice served on the board then the other vacancy came up. Mr. Hagler resigned to run for the House of Representatives. There came another cry that, "This is in your district and would you serve if you were, you know, appointed?" And then I think it came down to the city council has to vote on whoever it was and then one city councilman put me up. I don't know who put me up for appointment but then another city councilman put another candidate up and then the city council voted between the two of us and I think I won six-four on the first ballot and unanimous on the second and then I took my place on the city council.

Q. Okay, sir.

THE COURT: Now, was the other man white or [476] black, Doctor?

A. The other fellow was white.

THE COURT: So that in that case in that city council the black man came out ahead?

A. In that particular case, yes. I did win the appointment.

THE COURT: Yes, sir.

A. Over the same candidate that I ran for election, I ran against him in the election the following year.

THE COURT: You had run against him in the following year?

A. I ran against him right after I was appointed. Then the next time I had to run for city council I ran against him.



THE COURT: Did you beat him that time?

A. I beat him that time.

THE COURT: Then it is not true that a Negro cannot get elected here?

A. Well, in this particular case I don't think that, the only reason this man had any chance at all, he had the right family name. When I first started to run against him, they said, "You won't be able to beat him because the Gilmore name is a longtime Pensacola name and you'll get beat just because of the name." And they [477] come to find out he was not from the local Gilmores and he wasn't very well known and he had switched from two or three jobs and —

THE COURT: Race was not a factor in that election then?

A. In that particular race I don't —

THE COURT: Or was it? You were elected?

A. I was elected so I would say I didn't get all the votes because I was black because if I'd been white I would have got them all. Now, I think I beat him by a thousand.

THE COURT: You got most of the black votes but you also got some white votes?

A. I'd say I carried five precincts.

THE COURT: You carried five?

A. Five precincts that had more white people in it than black.

THE COURT: So that there were white people voting for you?

A. Right.

THE COURT: And not voting for your white opponent?



A. But there were eight precincts. There were eight precincts, all-white precincts, that voted for a man that in my opinion had no business in the race. Eight [478] all-white precincts voted for this gentleman and they knew nothing about him. Only five precincts, I don't know whether I carried the five, I know I scored votes in those five precincts, but there are thirteen, in Pensacola there are thirteen predominantly all-white precincts and in those thirteen precincts I lost eight of them to a man that nobody in town knew that well.

Q. And you were running as an incumbent at that time? A. I was running as an incumbent.

Q. Dr. Spence, who was it from the city council or leadership in the city that was interested in seeing a black appointed to the city council, what individuals? A. Let me see. I would think that, I don't know, I'd hate to say. My gut feeling would be that possibly Barney Burks — could I call on counsel over there, Mr. Caton? I think it was Mr. Burks was the one I thought, probably Mr. Burks and Howard Mitchell and Carl Mertins and Vince Whibbs. I think those were the four that wanted it.

Q. Now, Dr. Spence, when you were relating the meeting that you had in your office to suggest names to Mr. Burks and the others —? A. No, no, you're talking about my appointment [479] or Hollice's?

Q. Well, I assume that it was the same individuals? A. No.

Q. Okay, the individuals you just named, Mr. Burks and the others, when was that? A. That was for when I was appointed.

Q. I see. Who was it when Mr. Williams was appointed? A. Mr. Williams was appointed, it was Charlie Soule.

Q. Okay, sir. A. Charlie Soule and his group.

Q. When you were relating that meeting, you said that you and the others who met with you attempted to come up with a list of three or four black citizens who were acceptable. What do you mean by acceptable? A. Well, I would say to be acceptable would be a person that had some name recognition in the white community and someone that they just didn't detest and someone that they could live with and someone that quite a few of them knew and someone that had an outside chance of being reelected, and I would think if you would just name someone that no one, someone that just walked in to town and no one knew him and he didn't have any roots here [480] at all, that wouldn't particularly be a good candidate, or someone that had skirmishes with the police or different things like that. So we thought it would have to be someone that was more or less an upstanding, outstanding citizen.

Q. But did you consider black leaders who had been active in civil rights movements as being acceptable? A. Well, I know, I don't think that the history of the town speaks that our black leaders that have gone out on a limb, will never be appointed to boards, certainly not to elected official bodies. We've had many opportunities to appoint some of our outspoken leaders and they're never appointed.

THE COURT: Doctor, it's true too that there haven't been many Ku Klux Klan members appointed to those boards either?

A. Well —

THE COURT: I guess you see what I'm driving at, sir. People like yourself and Hollice Williams who were not so way out front trying to promote blacks regardless of

merit, perhaps, perhaps not the right word, but were really so aggressive, may have had problems getting appointed, just like people who represented the other end of that spectrum, for example, I haven't heard [481] of many of them getting appointed. But people like yourself and Hollice Williams have been appointed, have you not?

A. Yes, I was appointed.

THE COURT: I give you another example. If General Chappie James had come back here and wanted to run for office is there any doubt in your mind he would have gotten by far the majority of votes in this county, both black and white? A. I don't believe he could have won a county commissioner race.

THE COURT: General James?

A. No, sir. He might have won a House of Representatives race but I doubt if he could have won a county commissioner's race.

THE COURT: Why do you say that?

A. He would have been beat before he got above Nine Mile Road.

THE COURT: Why do you say that?

A. You might have had other people from the whole district who would vote for him on the merit that he contributed to his country.

THE COURT: Why would he be elected to the House of Representatives?

A. You would have a wider spectrum.

[482] THE COURT: The same people would vote for him. The House of Representatives members are elected in the same election as the county commissioners.

A. Aren't the House of Representatives elected from some of the other counties too? Say whether Chappie was running for Bob Sikes', he may come from Okaloosa.

THE COURT: It may cross the line

A. It would cross the line. The point I'm trying to make here, Judge, I don't know about how many Ku Klux members are appointed to some boards. I've been around some boards when they said that, well, they look at them a long time, but, see, I would say that Chappie might could win with the Eglin population voting for him and some of the Fort Walton people, some of these people that have moved down from Northern areas and so forth. They may just take the man at his image, but I'm saying from the Nine Mile Road to the Century line there's not a chance for a black candidate. When I ran for school board and I was in that hospital bed, they came down and told me, said, "Dr. Spence, you lost the election. How do you feel about it?" I said, "Wait a minute, wait a minute, how am I going to lose the election? They haven't counted District Four downtown." They said, "It doesn't make no difference. You got wiped out in Cantonment. You [483] got wiped out in twelve and eleven. You got wiped out in MaDavid, you got wiped out in Century, you got wiped out up there." They started bringing in the votes, they come in close, and, Buddy, when you start going to Nine Mile Road the sun is shut off, and Chappie would not win a county commissioner's race in this county unless every black person voted for him and he carried the thirteen white precincts in Pensacola and then I would like to look at the statistics to see if that would be enough to offset that fifteen hundred votes out of twelve. I think there's sixteen out of eleven, that polling place right off where 29 goes this way and the new roads go through there and they sit and vote there; they kill your black candidates right there.

That's where they kill them. That's where they execute them, right there.

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[496] Q. Dr. Spence, while you were on the city council did you find that black citizens who lived outside of your residency district would come to you with problems concerning city government? A. They would, yes. Anyone in Pensacola feels that any black man that would be on that city council belongs to them no matter where he lives. They just come to you and ask you, "What can you do about this?" You know, I'm your councilman. They don't care, because actually he voted for me. Now, in the City of Pensacola you don't have voting, well, you know that; no need of me going in that. You just have to live there, but everybody votes for you.

Q. That's why we're here, Doctor. A. Okay.

Q. Did you also find that to be true when you were on the school board; that is, that black citizens throughout the county would come to you and ask you for help on school matters? A. On the school board I was plagued with requests from teachers. The black teachers in Escambia County feel intimidated in my opinion and blacks, yes, sir [497] black principals, mothers of students that are being expelled, blue collar workers that didn't receive promotions or contracts, those were the type; bus drivers that didn't, those are the type things you would hear.

Q. Okay, sir. A. They didn't care what district I was from. They would come to the only member they had.

Q. Dr. Spence, if we can, let's move on now to your appointment to the school board. Can you tell us how that came about, please, sir? That was 1975, I guess. A. I was rolling along with a nice city council election with two years of nothing to do but reading city manager's reports

and rubber stamping the budget and making a few suggestions that never got out of committee when the Governor of the State of Florida decided that if Escambia County and Florida as such is going to move up into the upper stratas of national politics and human rights that it was far time that there would be a minority placed on one county office in this county. At this particular time there was a death of a very beloved school board member and there was an opportunity to appoint a black man to this particular job.

Q. For the record, Dr. Spence, who was that that passed away? [498] A. Mr. L. D. McArthur.

Q. Thank you, sir. A. At this particular time the Governor's Office tentatively appointed a replacement for Mr. McArthur and there was some difficulties involved with the appointment and I got a long distance call and I was asked, "Would you consider running for this particular office," I mean, "Would you consider accepting an appointment if the Governor would accept you?" And I said that, you know, "I've just been elected to the city council and there are some things I want to do with the city but I do know that there are many things that need to be done on the school board." And I was told, "Think about it and we'll get back with you and we'll run a check on you and so forth and then we'll see." All right, in the meantime I was advised by my constituency if a black candidate can have a constituency, whatever I had for a constituency advised me not to bother around with that school board thing over there, "Because you'll get your neck chopped off over there because it's a vicious, vicious atmosphere over there because everybody is clamoring. It's teachers against students, students against teachers, et cetera, et cetera, definitely black against white, and every time there comes a decision before that board where you have to

make a decision if [499] there's a black involved, if you take the part of the black they'll say you're a rubber duck official and no good and if you don't make it in favor of the white constituency you'll lose your reelection." Anyway I decided, weighing the factors, if I'm going to live in this county and work in this county I've got to pay my dues and I'm willing to take the risk, and I decided the decision at this particular time for the good of this county and this community and my race it would be more important for a black to run and to be appointed to the school board because we already had a black person on the city council and I thought we needed one there. And there was an outside chance if you were appointed you might get reelected and there would be a chance that you could open up the doors and maybe we could round this school system into what we would want it to be. And I accepted the appointment.

Q. Dr. Spence, thank you, sir. About how long did you serve on the school board? A. Two years.

Q. Okay, sir. During that time that you were on the school board did you have occasion to propose an affirmative action plan for hiring on the school board? A. Yes. I look back on my days at the school board and I'm just tickled to death because everything —

[500] MR. RAY: Judge, Your Honor, this line of testimony exceeds the scope of the pretrial stipulation on responsiveness.

THE COURT: In what respect? I don't know.

MR. RAY: Excuse me, Your Honor, it does not have to do with — let me get the pretrial stipulation. Appointments to nonemployment type advisory boards and committees, expulsions and suspensions and administrative —



MR. BLACKSHER: Promotion to administrative positions was one of the things that was contested.

MR. RAY: Appointment of administrators.

THE COURT: Well, if you all can't settle it between you I'll take a look at it. I don't remember the stipulation that well.

MR. RAY: It's a mention of affirmative action program.

THE COURT: Well, I assume the affirmative action program is a statement of hiring more minority people in positions with the school board as teachers and administrators and that kind of thing.

MR. RAY: Perhaps if Mr. Menefee could inquire as to what Dr. Spence had in mind in that program that might solve it.

THE COURT: Ask him. When you said affirmative action program, what are we talking about?

[501] A. Well, Mr. Ray is very familiar with it because he, okay, I'm sorry, Judge, you're right. But I was a member of the school board, Judge, and I proposed that the Escambia County School Board, in line with federal policies, establish an affirmative action program for the Escambia County School Board. The school board passed —

THE COURT: You say affirmative action program. You mean by that to recruit more minority, members of minority races in positions of employment with the school board? Is that what you were talking about? What do you mean by affirmative action program?

A. To set a policy. To set a policy stating that the school board would judge each applicant fairly according



to guidelines of the affirmative action program, that there would be equal appointments for positions not regardless of race and so forth, the whole spectrum of the school system, purchases, hiring, firing, the whole thing.

THE COURT: All right, sir.

A. Under the affirmative action program.

THE COURT: Mr. Ray, that's what he's talking about. Do you have objection to that?

MR. RAY: Your Honor, I was under the impression that Dr. Spence had in mind more of a program that granted

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[512] trial of a case before me, if I were to say there was no evidence for a verdict and render judgment, you tell me I have no perception of it. He says there was no evidence at all. That's what he said, and went into details, that there was no one testified that that boy had the knife or cut him, that there was simply no evidence to that effect. I don't consider that getting into — he was the man sitting at the trial and that's his version of it. You'll have an opportunity to contest it when it gets to you, sir. I don't understand that objection. The objection is overruled. Proceed, Mr. Menefee.

Q. Now, Dr. Spence, your candidacy in 1976 for the school board, who were your opponents in the Democratic Primary? Do you remember? A. I ran against Dr. Smith and Mrs. Carol Ann Marshall.

Q. Yes, sir. Were either of these opponents, had they sought election to public office before to your knowledge? A. Mrs. Marshall ran against Mr. L. D.

McArthur in the previous school board campaign. I'm not familiar with Dr. Smith's record.

Q. Okay, sir. What were the results? Who won the first Democratic Primary? A. The first primary Carol Ann pulled sixteen [513] thousand one votes. I pulled fifteen thousand nine hundred ninety-six. Dr. Smith pulled ten thousand two hundred approximately.

Q. Okay, sir.

THE COURT: You led? You were first or second going in?

A. I was second.

THE COURT: Second?

A. By about twenty votes.

THE COURT: Twenty votes?

A. Twenty or thirty, something like that.

Q. And what were the results as best you can recall? A. The runoff between Mrs. Marshall, she pulled twenty-nine thousand sixty something. I pulled nineteen eight, or twenty thousand.

Q. What kind of campaign did you conduct in that election? A. I did the usual things most candidates do in Escambia County. We went to rallies and went to the social clubs and we talked to friends, and television appearances, et cetera.

Q. Did you have much, were you able to raise funds for your candidacy? A. I raised some funds. I don't know, my [514] approximate raising, you can find out from the, I don't know exactly; a couple thousand dollars.

Q. A couple thousand dollars. Thank you. Dr. Spence, do you think your race was a major factor in your

defeat in that election? A. I think it was the only factor. I just feel that the racial atmosphere due to the frequency of the vote down through the last twenty years in Escambia County showing the position of voters above Nine Mile Road has clearly stated black candidates don't have any chance or stature and even proven to the point that in the previous city council election when I pulled, there's only been two black candidates in the history of Escambia County to pull an all-white precinct, Hollice Williams and myself; I pulled five precincts in the city council race in, well, 1974-75 and those same precincts that voted for me in the city council race, in the school board election race I didn't carry any of them. But when the reports came in, the TV stations and radio stations called me before any of the City of Pensacola precincts were posted and they told me that, "You were beat," and I was beat when precinct twelve came in.

THE COURT: Doctor, you say that in the school board race you didn't carry those five precincts you carried [515] in the city race?

A. No, sir.

THE COURT: What do you assign that to? You don't assign that to race then, do you?

A. I'm thinking that this was, I think, and I know it's bad in law, sir, I think it was racially polarized because I'm the same man they voted for in the city council race. I'm the same person.

THE COURT: That's my point. They once voted for you and next time didn't. How can you say there was racial polarization as far as you're concerned? They never would have voted for you the first time if they felt that way.

A. I think the first time I ran the other candidate

didn't present any image at all but in this particular school board race I figured the two of us ran that were running so close up, that I felt after the first primary, I figured that Mrs. Marshall would split the ten thousand between her; I figured Dr. Smith pulled ten thousand and we both pulled twenty thousand. I figured that according to my way of figuring politics and percentages and so forth that she would have pulled approximately five of his and I would have pulled five and it would have been a matter of twenty-five thousand apiece going in and we'd have split people that came to the [516] second primary that didn't come, but it didn't come that way. The way it came, I stayed almost level and the ten thousand that the other white candidate came about went all to the other white candidate.

Q. Dr. Spence, do you think the fact that you were, well, let me rephrase this. Were there events, the ones we've already discussed such as student discipline matters, school board policy matters, that came up between your election to the city council in 1975 and your candidacy for the school board in '76, also the Rebel flag incident? Were those events a major factor in your candidacy, the way voters perceived you in 1976? A. Well, definitely. This is a Southern community that has great roots, more, say, in racial symbols and differences and so forth, and when I was on the school board when the particular incident, I imagine you're referring to the Escambia High School incident, I remember very vividly where I was and what I was doing at the time that I heard the news. I was at the city recreation gymnasium at a basketball game and somebody came up and told me that the voting at Escambia High School went such and such a way and right then and there I said, well, I said, "There is going to be a lot of controversy down the line." If I had voted —

[517] MR. RAY: Your Honor, we object to this line of testimony on the basis that the Escambia High issue was an issue involved in the *Augustus* litigation in this court. That litigation has been excluded pursuant to the pretrial stipulation.

THE COURT: That I agree with, Mr. Ray, but we're not talking about that phase of it; we're talking now about the election afterwards and that was not excluded. As a matter of fact if you want to exclude it, it might be a little to your disadvantage. We're talking about, in fact I shouldn't say that, but I was getting ready to ask him a question a little later if you didn't about the election. He said that he was turned out of office, he thinks, because of the racial factor in that election after the controversy came up. We're talking about the election and that's all. We're not going into —

MR. RAY: I perceive Dr. Spence going into a description of what that controversy was and how he voted.

THE COURT: We don't need to go into that. That's been stipulated before us. We're only interested as far as that's concerned on the election and what happened in the election and that kind of thing, Doctor. Mr. Menefee, I think that's correct, is it not?

MR. MENEFEE: Yes, sir.

THE COURT: We don't want to get into detail on that.

[518] A. I'll just say I felt very definitely my pursuing that, the nickname situation at that particular high school, very definitely was to my disadvantage as a politician.

THE COURT: Well, all right, sir. Go ahead.

A. I would say that it wasn't popular to conduct yourself in the manner that I did on the school board dur-

ing this particular controversy. I would say that it was not racially popular.

THE COURT: Well, isn't it true that there were three of you who were running for election after all that controversy, the other two being white? All three of you were defeated for election.

A. Right, but I don't want to get into it.

THE COURT: You don't think that means anything to you? You have no idea or thought that the people of this county, black and white, were so tired of what had gone on out at that Escambia County School Board that the voters in this county, black and white, were saying, "We're not going to reelect incumbent school board members"? You don't think that was a factor in that race?

A. No, sir, because I acted like a pure gentleman in that race and I'm going to tell you —

THE COURT: My point is that, well, I thought I [519] said it, that there were people in this county who had gotten awfully tired of that situation at Escambia High School that had gone on so long and that, rightly or wrongly, they were saying to the school board members, "You let this thing go on so long," and that that was a factor in the defeat both of you and the other two incumbent school board members in that race. All three of you were defeated.

A. I don't think so. The reason I don't think so —

THE COURT: You don't think that was the problem?

A. I don't think that. The fact was this. When this particular thing came up, I was asked by people in this community to try to resolve this particular thing. Now, the other gentleman lost his election. There were two of us running, I think, just two.

THE COURT: there were three. I believe I'm correct.

A. Just two, Carl West and myself.

THE COURT: Weren't there three?

A. No. Carl West and myself. Gindl, Leeper and Bell stayed there.

THE COURT: Just two. All right, go ahead.

A. Carl West had been there several years and [520] when this particular thing came up we said, "We want to solve this particular problem." I wanted to solve it because people getting whipped out there and getting hit out there were black people. The people being abused were my people, so there's no reason in the world, me as a black politician, trying to represent my people, wanting this thing to continue. All I wanted for black children in Escambia High School to get was a quality education. I'm not going to preach that but I was asked, "Dr. Spence, why can't we settle this thing gentleman to gentleman?" Carl West was told, Carl West was told by the powers to be and he sat right beside me and we talked about it and he told me, said, "Don," he said, "This is —

MR. RAY: Objection, Your Honor. Hearsay.

A. Okay, I'm sorry.

THE COURT: You're going a long way from answering my question. I mean all the things that went on in the school board meeting have nothing to do with the question about what caused the defeat of yourself and Mr. West there.

A. I feel I was defeated because I was black. Mr. West did not campaign. Mr. West did not attend a single rally. He did not do anything to be reelected.

THE COURT: You don't agree with the contention



made by counsel in this case that the fact that you and [521] Mr. West had gone in there and had stood by your guns and knocked out that Rebel name, that that was a factor in your defeat? You don't agree with that then?

A. Yes, because —

THE COURT: They say it was a factor in the defeat of both you and Mr. West. You don't agree with that?

A. I say, I'm saying it was a factor but I think it was a racial factor because the black people still voted for me. My black constituency held true to 96 percent.

MR. MENEFEE: Judge, may I?

THE COURT: I'm going to turn him back to you, sir. You go right ahead.

MR. MENEFEE: Well, Your Honor made the observation the voters of Escambia County had perhaps disgust or whatever with the incumbents —

THE COURT: That's right. I was suggesting that a factor in his defeat and Mr. West's defeat was the possibility or the probability that the people of this county, black and white, had gotten pretty tired of that situation at Escambia High School and, rightly or wrongly, were blaming members of that board for it and voting against them in an election for that reason, and he says he doesn't agree with that.

[522] MR. MENEFEE: Plaintiffs' exhibit 15, the regression analysis, the scattergram for Dr. Spence's election or campaign, shows that of those five precincts that are in excess of 90 percent black they gave Dr. Spence in excess of 90 percent of their vote.

THE COURT: I understand that. Nonetheless other people in the county didn't vote for him and didn't vote for Mr. West and I was just approaching that phase of it.



MR. RAY: Your Honor, if Mr. Menefee —

THE COURT: He says he does not believe that was a factor, and let's go on.

MR. RAY: Will I have a chance to present argument at this point?

THE COURT: You're right, sir. We'll ignore that and we'll go ahead. Mr. Menefee, let's get back to interrogation.

MR. MENEFEE: Okay, sir.

#### DIRECT EXAMINATION RESUMED

BY MR. MENEFEE:

Q. Dr. Spence, going back to your appointment to the city council in 1975 or 1974, and then you ran in 1975, do you think it helped your candidacy, the fact that you had been appointed to the city council before you ran?

A. No question about it. I would never have made [523] it if I hadn't been appointed.

Q. Dr. Spence, you have several times referred to the area above Nine Mile Road in connection with your race for the school board. If you would, how would you assess the chances of a black candidate running in the City of Pensacola, all of which is below the Nine Mile Road?

A. Well, I think that a black candidate running in the City of Pensacola at this particular time, if he didn't carry half of the thirteen predominantly white precincts, he couldn't make it

MR. MENEFEE: Thank you, sir. I have no further questions.

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## TESTIMONY OF BILLY TENNANT

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[573] DIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Mr. Tennant, could we have your name and address, please? A. B.G. Tennant, 4 Teakwood Drive.

Q. Are you presently employed by the Escambia County Health Department? A. Yes, I am.

[574] Q. What is your position there? A. I'm director of Environmental Health.

Q. Mr. Tennant, how long have you lived in Pensacola? A. Well, since 1936, but I'm a native of the county.

Q. Mr. Tennant, were you in recent years appointed by the Escambia County Commission to a committee to study charter government? A. Yes, I was.

Q. What year was that? A. Approximately three years ago.

Q. All right, did you become the chairman of that so-called Charter Study Committee? A. Yes, I did.

MR. BLACKSHER: Does the Court need any kind of development of what charter government means?

THE COURT: I think not.

MR. BLACKSHER: Or we can just presume everybody knows that.

THE COURT: Unless somebody wants it on the record, come to think of it. We might ask Mr. Tennant, tell us very briefly what charter government is, its overall concept as opposed to other types we have now.

A. The overall concept of charter government is to [575] bring home rule to county government. In other words it's a constitution for the county government similar to the state constitution or United States Constitution.

Q. Can we agree the Constitution of Florida provides alternative government forms for counties, either the form under the general laws or a charter form which provides more autonomy for the local government?

A. Yes, it does.

THE COURT: It's not as opposed to consolidation of government? I was thinking it had that aspect.

A. Well, it could be consolidation but it could also not be consolidation. It could be either direction. It could allow for the cities to remain as they are or it could, a charter could consolidate the city and county government.

THE COURT: That ought to be enough for record purposes, I would think, don't you agree?

MR. BLACKSHER: Judge, I think the story is that there were a lot of other voters in Escambia County who had that impression too.

THE COURT: Well, I thought it was one of the background purposes in it, although home autonomy was the main, overriding purpose too. We've had some of both of it going on. Maybe I was mixed up. Go ahead. Your study, Mr. Tennant, was mostly for autonomy, that is, to [576] bring local home rule to the county?

A. That's true, Judge, My study indicated it would possibly be better since the voters had previously rejected the consolidation of city and county government to establish a charter allowing a charter for the county government and allowing the city government to remain.

Q. I show you a document marked plaintiffs' exhibit 98. As you identify that, if the Court permits, I can shorten this by asking him some leading questions. A. Yes, this is the report prepared by, a majority report prepared by the five-member committee appointed originally by the Board of County Commissioners.

Q. Could you tell us who was on the committee, please? A. Mr. Adrian Blanton; Mr. Ashton Brosnahan, Jr.; Mrs. Jacqueline Simmons; Mr. Frank Westmark; and myself.

Q. Okay, sir, could you just briefly tell us who each of those people is? A. Mr. Blanton works for Gulf Power. Mr. Brosnahan is a retired postmaster for the county. Mrs. Simmons is a school teacher.

Q. And she's black, isn't she? A. Yes, she is. And Mr. Westmark is with St. Regis Paper Company, and of course I'm with the Health Department.

[577] Q. In that proposal by the committee that was, I take it, submitted eventually to the county commission, is that correct? A. That is correct.

Q. Would you show the Court in that document what you propose with regard to apportioning the Escambia County Commission? A. This proposal was presented to the Board of County Commissioners to expand the existing county commission from five people to seven people, with five persons being elected within districts and two people being elected at-large.

Q. Does the proposal contain an apology or rationale for this particular apportionment starting on page 24? A. Yes, it does.

Q. Without reading all of that, since it is in the record, could you just briefly tell us what the committee's rationale for that apportionment was? A. Well, the committee's rationale was simply that it was a case of economics, that it was costing, the committee, I believe, evaluated the cost of running for a Board of County Commissioner's seat for approximately twenty thousand dollars, and in order to cut down the cost of running and in order to provide a more meaningful representation [578] and closer identification and scrutiny of the commissioners, that the rationale was to elect the commissioners from districts and at large so as to give a balanced representation.

Q. In the committee discussions was the opportunity for minorities to elect candidates discussed with respect to the district elections? A. There was some general discussions along those lines and of course the committee was looking at the case in Mobile, but I believe the overriding thought as far as the committee was concerned was to be able to lessen the cost of running for public office and also to make it a little more, well, to improve the possibility of people having to secure large sums of money from various people in order to run.

Q. All right, sir. Although not — excuse me, Your Honor. On page 25 of the proposal when it says the charter government study committee felt that the commission should be enlarged to insure that the plan of representation would be equitable, representative and responsive, did that include the idea that even minority groups would have better representation? A. You could infer that, I believe, but as I said, the overriding consideration was economics.

Q. I understand, sir. Now, Mr. Tennant, would [579] you identify the next document, which is marked as plaintiffs' exhibit 99? A. Yes. This is the minority report. Bear in mind that this document, the original document that went to the Board of County Commissioners, was a majority report. Three members of the committee were for it and two were against it. And this document is the answer of the minority report to the Board of County Commissioners.

THE COURT: Did it also go to the board for its consideration?

A. Yes, sir.

THE COURT: Both reports?

A. Yes, it did.

Q. Both reports went to the Escambia County Commission? A. Yes, it did.

Q. All right, for the record, the minority report also proposes single-member districts, does it not, at the top of the second page? A. Yes, it says, "Election of county commissioners: A total of five, shall be by districts and on a nonpartisan basis."

Q. All right, sir, so in effect the minority was actually recommending dropping the two at-large votes and just having district elections?

[580] A. This is right, based upon the economics.

Q. The cost? A. The cost.

Q. Okay, now, what happened when the majority and minority reports of the first committee were submitted to the Escambia County Commission? A. A review was made by the board and an additional committee was ap-

pointed consisting of myself and Mr. Brosnaham, since I was on the majority side and Mr. Brosnaham was on the minority side. Another committee was formed by the commission to review the differences between the majority and the minority report and come back with another document.

Q. All right, sir, who else was on the committee besides you and Mr. Brosnaham, the second study committee, we'll call it? A. There was myself, Mr. Brosnaham. I can't, I don't remember, you know, the total membership.

Q. Was Commissioner Deese, County Commissioner Deese, on it? A. I believe Mr. Deese was on it.

Q. Was Mr. Lott on the second committee? A. I really don't know who all was on that second committee.

Q. All right. [581] A. But the record is at the court house and I'm sure you can establish that. But I believe that Mr. Deese was a member of the committee.

Q. Okay. A. I think Mr. Lott served the committee as the county attorney.

Q. Was a Ms. Pat Jones from the League of Women Voters on that second committee? A. Yes, I think she was.

Q. All right, sir, do you recall whether there were any black members of that second committee? A. I don't believe there was.

Q. Okay, now, I show you a document marked for identification as plaintiffs' 100, and could you tell the Court what that is? A. Yes. This is the document that was developed by the second committee.

Q. Was that document also presented to the county

commission as the recommendation of the second study committee? A. Yes, it was.

Q. Does that document call for district elections of county commissioners? A. I believe that it does, sir.

Q. Could you find that and maybe I can help you, [582] because it's tough to. Yes, it's section 201? A. Section 201 reads: "The legislative power of the county shall be vested in the Escambia County Commission, hereafter referred to as the Commission. There shall be five Commission districts and one commissioner member shall be elected from each district by voters of that district." And it limits the terms of the commissioners to three consecutive terms.

Q. Okay, sir, was there any minority report to that recommendation? A. No, there was not.

Q. Were all of the members of the committee in agreement with the proposal that was submitted? A. To my knowledge, yes.

Q. Do you recall Commissioner Deese being opposed to that report? A. No, I don't.

Q. What happened when this second charter proposal was submitted to the county commission? A. It was submitted to the commission for their edification, and bear in mind that both committees were a committee appointed by the Board of County Commissioners and any document prepared by the committee would have to go to the Board of County Commissioners for final ratification or for whatever usage they would prefer to [583] put it to.

Q. All right, sir, and what usage, with respect to the reapportionment part of the charter proposal what did the county commission do? A. The commissioners felt like the at-large representation was a more reasonable and fair approach to electing the Board of County Commissioners and therefore they changed that part of the document.



Q. Changed the district elections to at-large elections? A. That's right.

Q. All right, sir. A. I might also point out too that there was discussion in the second committee on the at-large election and there was opposition to the district elections within the framework of that committee but a majority vote voted that there should be district elections and that's the way it came out.

THE COURT: You say there was some opposition to which part of it?

A. The second committee.

THE COURT: There was some opposition in going to districts rather than at-large?

A. Yes, there was.

Q. Let me show you a document that's already in [584] evidence, and it's plaintiffs exhibit 72, and would you just identify that document.

A. This is the final charter that was put before the electors for ratification or rejection.

THE COURT: What exhibit? What number is that?

MR. BLACKSHER: It's 72, Your Honor, and it's already in evidence and it is in fact a copy of the charter that was published in the local newspaper and submitted to the voters.

A. This is true.

Q. What was the date? Is there a date on there? A. For referendum on November 8, 1977.

Q. Okay, sir, was there a unanimous vote of the county commission to change the district elections to at-large elections, do you know? A. I don't know. I wasn't present at the time that the commissioners took a final vote, but I would assume that that would be so.

Q. Okay, so the referendum considered a charter proposal that included not district elections but at-large elections? A. This is true.

Q. And was the charter proposal or referendum defeated? A. Yes, it was.

[585] Q. All right. Mr. Tennant, are you presently serving on another commission to study charter government for Escambia County? A. Yes, I am.

Q. Just tell us briefly what that commission is and how it was formed. A. This is a charter commission that has been appointed by the legislative delegation to write a proposed charter to be submitted to the voters for ratification or rejection.

Q. Was it appointed by the legislative delegation? A. Yes, it was.

Q. And will there, from this commission, result another referendum on charter government? A. Yes, there will.

Q. When will that referendum most probably be? A. I have no idea at this time but it's my understanding it will be sometime in 1979, before July the 1st, I believe. The commission has to finish its document and the referendum has to be held during the year 1979.

Q. Will this charter commission be considering reapportionment among other things in respect to the charter government? [586] A. I'm sure that it will.

Q. Is there any way to predict what the commission as a whole ultimately will propose with respect to districting? A. I have no way of predicting that.

MR. BLACKSHER: All right. Your Honor, we offer in evidence plaintiffs' exhibits 98, 99 and 100.

THE COURT: They come in without objection?

MR. LOTT: Your Honor, the only objection that we would have is to the relevancy of this whole line of questioning on the ground that the county commissioners are defending this law suit and obviously feel that general elections, at-large elections, are more beneficial to the public than single-member districts, and that's the most the evidence could prove.

THE COURT: Well, all these things may or may not give us a picture at the end of it, Mr. Lott. I'm going to overrule your objection, if that's the objection to it.

MR. BLACKSHER: We have no further questions of Mr. Tennant.

#### CROSS EXAMINATION

Q. Mr. Tennant, I believe you mentioned on direct examination that the feeling of the charter [587] commission or charter committee that was studying charter government at the request of the county commissioners was basically that the cost of election was too great in the at-large system. Is that basically correct? A. This is basically correct.

Q. How much of a role did racial consideration or the ability to carve up the county into small districts in order to enable minorities to have a better chance of representation play? A. I think as far as the racial implications in making that decision was minimal. I don't believe that there was any consideration given that would override in any way the economic consideration that the committee was reviewing because our study indicated the cost of running for office was getting to be quite a sum of money and therefore the person running for an at-large office, because of that sum of money, would have to raise considerable money from some source.

Q. In connection with the determination, you mentioned in your direct examination that you considered something of the effect of the Mobile litigation, is that correct? A. That's right.

Q. Isn't it true, Mr. Tennant, that the only consideration that was really given in this regard was [588] the fact that the committee felt that if federal law were to require that single-member districts be adopted that the committee would rather adopt it itself rather than have the federal courts adopt it for the committee? A. That's true. That's true. The thought was that the people should have an opportunity to express their opinion in this area rather than have the federal courts adjudicate that this is the position that elected people ought to be elected, the method by which people ought to be elected.

Q. All right, now, Mr. Tennant, what was the philosophy behind the charter government as proposed by your charter committee as far as the function of the Board of County Commissioners? A. The charter would strengthen the authority of the Board of County Commissioners to handle problems that are basically of a local nature.

Q. Let me clarify my question. What I'm trying to figure out, get out here, is whether or not the county commissioners under the charter form that you proposed would have the same kind of administrative responsibilities as they presently do or whether they'd be limited to more of a policy-making body. A. Well, under the charter proposed by both committees the commission would be more of a policy-setting [589] board and would not act as an administrative and policy board but strictly more or less as a legislative policy-making board rather than strictly an administrative policy-making board.

Q. So the function of an individual county commissioner would have been modified somewhat from the present commission in that the county commissioner would not be concerned with the day-to-day affairs of the county but would rather be concerned basically with policy-making, is that correct? A. That's correct.

Q. So therefore an individual county commissioner's activities would be somewhat less than they would be under the present system, is that correct? A. That would be true as far as administrative functions, but so increase their legislative powers.

Q. I see. But their day-to-day activities in performing their job would be decreased under the proposed charter? A. That's true, yes.

Q. Okay, and in that instance would you expect as a result of the charter that the county commissioners would have the same kind of salaries that they would have had as if they continued under their present system, or do you have any opinion on that? [590] A. Well, neither one of the committees recommended establishing any salaries within the framework of the charter. They recommended or did write into the charter that the general legislation which establishes the salaries of all boards of county commissioners over the state would be the prevailing wage rates for the elected county commissioners.

Q. Okay, but my point is that under the proposed form of county government that you were proposing in your charter committee the individual county commissioners would be doing in effect less work and therefore the kind of job they had was somewhat diminished and the fact that they would have to go to considerable expense in an election county-wide would make a considerable difference in the fact they weren't going to have that much

authority and power when they completed and got there. A. Yes, sir, that was certainly taken into consideration.

Q. Okay, Mr. Tennant, you're fairly familiar with the concept of charter government in escambia county as indicated by your testimony that you have served on three committees and are presently serving on a committee appointed by the Legislature for charter government. Would you say that it's a fair statement that there's substantial difference of opinion in Escambia County as to [591] whether at-large or single-member districts are preferable?

A. Yes, I would say that would be a fair statement, Mr. Lott, that there are considerable differences of opinion among the people on that particular point. In fact there was differences of opinion on the second committee on that point.

Q. And the purpose of the charter proposal was to have an opportunity for a decision to be made and that decision was made by the county commissioners in favor of at-large elections when it was presented to them, is that correct? A. That's correct, and it was certainly within the commissioners' prerogative and authority to do this because, as you know, both committees were appointed by the Board of County Commissioners to develop information for the Board of County Commissioners and to develop a proposed charter for their review and analysis prior to any referendum. That was true, yes, sir. That's true.

MR. LOTT: No further questions.

THE COURT: You say there are substantial differences in opinion. What are the reasons, as you know them, at least, for the differences in opinion? From your committee I understand your chief reason was economic.

[592] A. Yes, sir.

THE COURT: The cost of running. Were there other reasons that you know of?

A. Well, some of the reasons was, as I stated here, was that if there were to be district elections that it's better for the people to determine the method district elections rather than the method being formulated or put into effect by the federal courts. That was one of them. The other is that the people that felt like that at-large voting was more representative because of the fact that there was no dilution of anybody's vote from the standpoint of running at-large, every person's vote was substantially equal according to the information that came from various members of the committees. And I believe at one time that that was brought out in the original committee, Your Honor.

THE COURT: Yes, sir.

A. But the overriding basis by which both committees operated was one of economics.

THE COURT: Yes, sir, I understood that.

A. That it's much cheaper to run an election within a district than it is to run an election countywide.

THE COURT: Mr. Blacksher, I should have waited till you finished. I'll let you go ahead.

### REDIRECT EXAMINATION

[593] Q. One question.

THE COURT: Yes, sir. Go right ahead.

Q. If the idea of the committee or the intent of the committee was to give the people of Escambia County the chance to express their own opinion about district elections rather than have a court decide for them, is it fair to

say that the county commissioners excised that provision and did not give the people of Escambia County the opportunity to make that choice?

MR. LOTT: Objection, Your Honor. That question is plainly argumentative.

THE COURT: That objection is sustained.

MR. BLACKSHER: That's all we have.

THE COURT: Mr. Tennant is excused from further attendance, is he not?

MR. BLACKSHER: Yes, he is.

THE COURT: Mr. Tennant you're excused from further attendance. your next witness, Mr. Blacksher.

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